

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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No. 10,243

Joseph W. Stewart

JOINT APPENDIX TO BRIEFS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

50

HENRY F. BUTLER,
ESTELLE K. BUTLER,
Petitioners,

VS.

DISTRICT OF COLUMBIA,
Respondent.

Petition for Review of Decision of the ~~Tax~~ Board of
Tax Appeals for the District of Columbia

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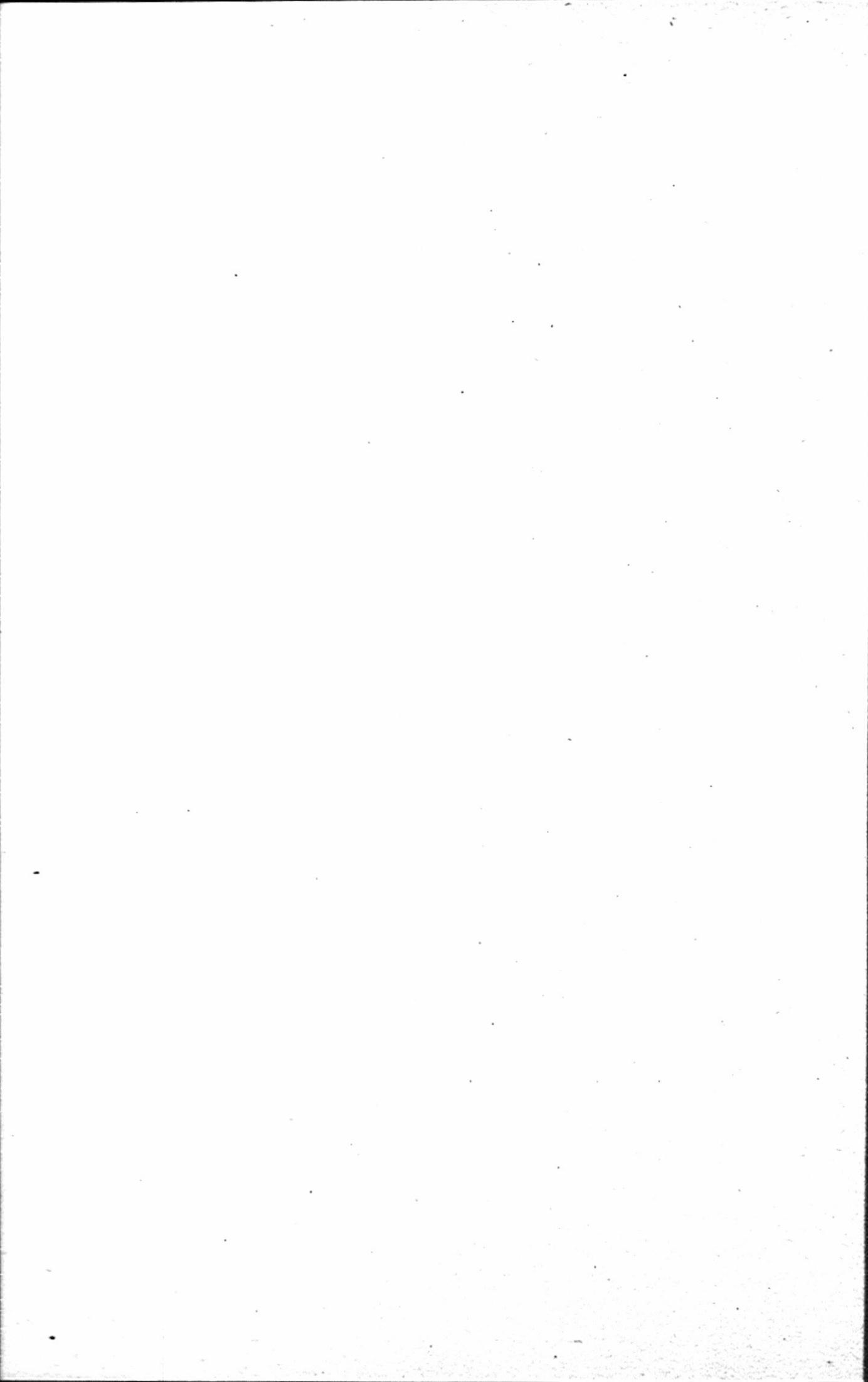
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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,243

**HENRY F. BUTLER,
ESTELLE K. BUTLER,**
Petitioners,

VS.

DISTRICT OF COLUMBIA,
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**Petition for Review of Decision of the Tax Board of
Tax Appeals for the District of Columbia**

JOINT APPENDIX TO BRIEFS

Filed Dec 3 1948 Board of Tax Appeals for the District
of Columbia

The above named petitioners petition for a reversal of the disallowance of their claims for refund of income taxes paid to the District of Columbia for the tax years 1942, 1943, 1944 and 1945, and for a refund of those taxes and allege as follows:

1. The petitioners are individuals who are presently domiciliaries and legal residents of Woolwich, Maine, with offices at 1011 Investment Building, Washington, D. C.

2. The taxes in controversy of which refunds are claimed are income taxes for the calendar years as follows:

(a) Calendar year ending December 31st, 1942 for which separate returns were filed; in amount \$1,280.18 plus interest to June 20, 1946 of \$118.68, totalling \$1,398.86 by Henry F. Butler, and in amount \$1.07 plus interest to June 20, 1946 of \$00.10, totalling \$1.17 by Estelle K. Butler.

(b) Calendar year ending December 31, 1943 for which joint return was filed in amount \$807.39 plus interest to June 20, 1946 of \$50.63, totalling \$858.02.

(c) Calendar year ending December 31st, 1944, for which joint return was filed in amount \$89.33 plus interest to June 20, 1946, of \$2.93, totalling \$91.26.

(d) Calendar year ending December 31, 1945, for which joint return was filed in amount \$114.17 plus interest to June 20, 1946, of \$00.31, totaling \$114.48.

2 The taxes in controversy were reported by income tax returns filed under protest on or about October 14, 1944 (the separate returns for 1942 and the joint return for 1943); April 14, 1945 (the joint return for 1944) and May 14, 1946 (the joint return for 1945).

3. The taxes in controversy were paid under protest, duress and compulsion on or about July 1, 1946; (Copies of receipts attached marked Exhibit F, G, H, I and J respectively); claims for refund were filed on or about June 28, 1948; claims were disallowed by communication of C. A. Beard, Jr., Administrator, Income and Franchise Tax Division, dated September 7th, 1948, and postmarked September 7, 1948; (copy attached marked Exhibit K.)

4. The assessment and payment of the taxes involved, and the disallowance of the claims for refund thereof are based on the following errors:

(a) The Government of the District of Columbia erred in not finding and recognizing that the petitioners were not domiciled in the District of Columbia on December 31, 1942, nor on December 31, 1943, nor on December 31, 1944, nor on December 31, 1945, nor at any other time, and consequently are not liable for income tax in the District of Columbia for any year.

(b) The Government of the District of Columbia erred in finding that the petitioners do not establish the fact of domicile outside the District of Columbia on December 31, 1942, December 31, 1943, December 31, 1944 and December 31, 1945, and in disallowing their claims for refunds.

5. The facts upon which the petitioners rely as the basis for this proceeding are as follows:

(a) The petitioners did not have a permanent home in the District of Columbia and were not domiciled in the District of Columbia on December 31, 1942, nor on December 31, 1943, nor on December 31, 1944, nor on December 31, 1945, nor at any time.

3 (b) The petitioners have at all times from 1921 through the present time had their permanent home

in Woolwich, Maine, and have been domiciled either in Woolwich, Maine or Cambridge, Massachusetts; accordingly on December 31, 1942, December 21, 1943, December 31, 1944 and on December 31, 1945, and at all other times, the petitioners have had their permanent home and have been domiciled in a state outside of the District of Columbia.

(c) The petitioners' permanent home of which they have had exclusive possession from 1921 continuously to the present time has been in Woolwich, Maine; the petitioners have never had a permanent home in the District of Columbia.

(d) The petitioners have at all times since 1921 had the intention of maintaining their permanent home, and consequently of being domiciled in a locality and state outside of the District of Columbia; and conversely have had a definite intention not to establish their home, and consequently not to be domiciled, in the District of Columbia.

(e) During the years here involved the petitioners not only intended to return to their permanent home in Woolwich, Maine but did so return each year and participated in those functions incident to one's home (such as participating in elections, attending town meetings, and attending to the duties and pleasures incident to the maintenance of a permanent home and one's responsibilities in the community where such home is located); the petitioners during the years involved and down to the present time have constantly intended to return to their home in Woolwich, Maine, for permanent residence and have never intended to establish a permanent home or permanent residence elsewhere.

WHEREFORE, the petitioners pray that this Board may hear the proceeding, and

(1) Reverse the decision of the Assessor of Taxes denying petitioners' claim for refund;

(2) Find and determine that the petitioners were not

4 domiciled in the District of Columbia on December 31, 1942, nor on December 31, 1943, nor on December 31, 1944, nor on December 31, 1945, nor at any other time;

(3) Allow the refunds claimed by the petitioners and direct that the same be paid to the petitioners, and

(4) Such other and further relief as may be meet and just.

Henry F. Butler
Estelle K. Butler

* * * *

11 Filed Dec 13 1948

Motion to Dismiss

Comes now respondent by its counsel and moves the Board to dismiss the petition filed herein on the ground that the petition fails to state a claim upon which relief can be granted.

* * * *

21 *Proceedings*

* * * *

MR. UPDEGRAFF: On Paragraph 1, I will admit that petitioners are individuals and deny the remainder.

As to Paragraph 2, I will admit subparagraphs (a) to (d) inclusive.

As to Paragraph 3, I will admit that the taxes were paid under protest on July 1, 1946; that Exhibits F, G, H, I, and J are true copies of the tax bill and receipts therefor. I will admit claims for refund were filed on or about June 28, 1948, and that they were disallowed by communication dated September 7, 1948.

* * * *

As to Paragraph 4, I deny that the assessor committed any error, and wish to observe as to the effect of said paragraph 4, that no issue in our contention is raised by those averments. I will deny the remainder of the petition.

22 THE BOARD: All right. Mr. Butler, do you want to make an opening statement?

* * * *

MR. BUTLER: The opening statement by myself as attorney is that the issue involved in this case is the place of domicile of these petitioners on the last day of the calendar years 1942, '43, '44, and '45; that petitioners contend on each of those days they were domiciled in Woolwich, Maine, as appears in the petition taken in conjunction with the tax returns which are made a part of it.

The Court of Appeals held that these petitioners were domiciled in Massachusetts for the years 1939 and 1940. The question therefore appears to go to whether or not these petitioners changed their domicile from Massachusetts to Maine.

That, your Honor, is the opening statement, and now I would like to be sworn and take the stand as a witness. Thereupon,

Henry F. Butler

was called as a witness for and on behalf of the petitioners and, having been first duly sworn, was examined and testified as follows:

Direct Examination

* * * *

23 THE WITNESS:

* * * *

I was born in Yonkers, New York, in 1896. I spent most of my childhood away from my family home, at school, in the Navy, and at college.

In 1921, I married Estelle Kemper, in Virginia. We thereupon set up a home and housekeeping in Woolwich, Maine, and lived there the year around, exercising all of the rights and assuming the burdens of inhabitants of Woolwich, Maine.

MR. UPDEGRAFF: If your Honor please, I must object to this testimony on the ground that any evidence as to where the petitioners were domiciled prior to December 31, 1940, is improper on the petitioners' opening statement as to what their contentions were.

Their contentions are they were domiciled in Woolwich, Maine, for the calendar years 1942 to 1945, inclusive, and Mr. Butler pointed out that the Court of Appeals had decided that they were domiciled in Massachusetts as of December 31, 1940.

I object and suggest that the only proper evidence has to do with the events which transpired subsequent to December 31, 1940.

THE BOARD: I will overrule the objection subject to subsequent motion to strike, if you care to make it.

* * * *

24 THE WITNESS: In 1926, petitioners purchased the premises which they now claim as their home in Woolwich, Maine.

In the fall of 1927 I was admitted to Harvard Law School, and with my wife we went to Cambridge but continued to return to Maine periodically.

In 1930, I was admitted to the bar of Massachusetts and became affiliated with a law firm in Boston and practiced law in Boston until 1934, at which time I obtained leave of absence from that firm and came to Washington to practice with my father, now deceased.

In each year, 1934 through 1945, petitioners have returned periodically to their home in Maine, the place they contend is their home in Maine.

On December 16, 1940, while in Woolwich, Maine, I wrote the Selectmen of the Town of Woolwich stating that having fulfilled the requirements to again be registered as a voter, I desired that I be recorded as a voter on the voting list eligible to vote commencing in 1941 and thereafter.

* * * *

25 If it please the Court, I introduce copy of the letter which I wrote to the Selectmen on December 16, 1940.

* * * *

THE BOARD: It will be marked as Exhibit 1 of the Petitioners and received in evidence.

* * * *

THE WITNESS: Both of the petitioners were in Woolwich, Maine, in the year 1941, on at least four different occasions, commencing in May of that year.

* * * *

I paid Maine real estate taxes and poll taxes for the year 1941 in the towns of Westport and Woolwich, Maine, where I have my property. They are adjoining towns.

I would like to submit in evidence tax receipts for those years.

THE BOARD: Is liability for the real estate tax on domicile?

THE WITNESS: No, your Honor, the poll tax is on domicile.

THE BOARD: Then I exclude the real estate tax receipts.

26 THE WITNESS: Then may I offer the tax receipts to show the payment of the poll tax in the town of Woolwich?

THE BOARD: Is that on the same one?

THE WITNESS: On the same one.

* * * *

May I offer the receipt for Westport to show it is not paid in Westport, to establish to your Honor's satisfaction that the poll tax is assessed only where the person is resident and inhabitant.

* * * *

THE BOARD: The bills will be admitted for the purpose of showing the payment of the taxes only, as Petitioners' Exhibit No. 2.

* * * *

THE WITNESS: Commencing with the calendar year 1941 and through each year, 1942, '43, '44, and '45, the petitioners were registered voters in the town of Woolwich.

I would like to file an affidavit to that effect from the town clerk.

* * * *

THE BOARD: It will be Petitioners' Exhibit No. 3 in evidence.

* * * *

27 THE WITNESS: For the years 1941, '42, '43, '44, and '45, the petitioners paid all of the taxes: real, personal, tangible and intangible, and poll, for which they were assessed in the town of Woolwich, and I would like to offer the statement of the Collector to that effect.

* * * *

THE BOARD: This shows, Mr. Butler, that you paid the taxes for which you have been assessed. There is no evidence as to what taxes you have been assessed.

THE WITNESS: Your Honor, may I also introduce the receipted tax bills for the town of Woolwich for the years 1942, '43, '44, and '45.

* * * *

THE BOARD: They will be numbered serially in evidence.

* * * *

THE BOARD: Am I correct in understanding that Exhibits 5, 6, 7, and 8, are the taxes assessable referred to in Exhibit 4?

THE WITNESS: And including the earlier exhibit which was for 1941 tax year, that is right, your Honor.

* * * *

28 THE WITNESS: In 1941, I purchased a car in Boston which I drove to Maine and had licensed there. I do not have the 1941 record of registration of the

car. However, simultaneously with registering the car I obtained a driver's permit which would be necessary for a person who is an inhabitant of the State and had not been necessary while I was an inhabitant — for a person who was not an inhabitant of the State previously, and in evidence of the operator's license, I submit the Maine license. That looks like a photostat but that is the license.

* * * *

THE BOARD: Let it be marked Petitioners' Exhibit No. 9 in evidence.

* * * *

THE WITNESS: I have the registration of the car for 1942 which I would like to submit, showing the registration of the car and the stated residence, address.

* * * *

THE BOARD: Let it be marked Petitioners' Exhibit No. 10 in evidence.

* * * *

THE WITNESS: I have my operator's licenses 29 for the years '42, '43, and '45. '44 seems to be missing.

I would like to offer those simply to show the fact that I claimed to be an inhabitant and registered.

* * * *

THE BOARD: They will be marked chronologically as Petitioners' Exhibits in evidence.

* * * *

THE WITNESS: In 1941, I undertook a considerable amount of work in renovating and renewing the premises, the house where we lived in Woolwich, including repair and rebuilding of the cellar and putting in a new cellar floor which cost around \$1200; putting in an oil burner, hot air furnace, which cost approximately \$700, and entering upon a program of painting within and without the house which came to a total cost of well over a thousand dollars.

That program was completed in the summer of 1942.

In March, 1942, both the petitioners attended the annual town meeting in Woolwich and were in Woolwich on several other occasions in that year. The war had started. We were asked not to use gasoline and not to travel extensively.

In April of 1942, both petitioners filed District of Columbia income tax returns for the year 1941 under protest showing that they claimed legal residence and domicile in Woolwich, Maine, and tendering checks in payment
30 of the portion estimated due by them.

I desire to introduce a letter of Mr. J. R. Merrick, Administrator of the Income Tax Division of the District, dated April 16, 1942, with the checks of the petitioners which had been tendered with the income tax returns.

* * * *

THE BOARD: Let it be marked Petitioners' Exhibit 14 in evidence.

* * * *

THE WITNESS: During 1942, both these petitioners were at their house in Woolwich, Maine, on several occasions in addition to the March trip.

In 1943 I applied for admission to practice before the courts of Maine on motion claiming residence in Maine, and in the March term 1943, I was admitted to practice at Augusta.

In support of admission, although it doesn't show the actual place, may I offer certificate of my admission?

* * * *

THE BOARD: Let it be marked Petitioners' Exhibit 15 in evidence.

* * * *

THE WITNESS: During the calendar year
31 1943, both petitioners were in Maine on various occasions, in August and September, in addition to my presence there in March. My wife was not there in March of 1943.

In 1944 both the petitioners were in Maine at least in parts of August and September.

In 1945 the petitioners were in Maine in August, and I am not sure whether on other occasions or not. In the fall of that year, we went to South America, and I think we were forced to curtail expenses in going elsewhere.

On all Federal income tax returns the petitioners, for the years '41, '42, '43, '44, and '45, have claimed Woolwich, Maine as their domicile.

* * * *

32 THE WITNESS: * * *

Then may I offer in evidence certified copies of Federal individual income tax returns 1941 for myself. We were informed that 1941 for my wife has been destroyed. Of 1942, separately for myself and my wife. Of 1943, joint return. 1944, joint return. 1945, joint return.

* * * *

33 THE BOARD: Then I will admit them for all purposes.

* * * *

THE BOARD: Let them be marked Petitioners' Exhibits 16, 17, 18, 19, 20, and 21 in evidence.

* * * *

THE WITNESS: During the years 1941, '42, '43, '44, and '45, I maintained bank accounts in Bath, Maine, with the First National Bank of Bath, which is the city next to the town of Woolwich to the west. That was a savings account with the First National Bank of Bath, Maine. A savings account with the Depositors Trust Company at Wiscasset, Maine; a checking account with the State Street Trust Company, Boston, Mass.; a savings account with the Yonkers Savings Bank, Yonkers, New York; a checking account with the National Savings and Trust Company, Washington; a checking account with the Riggs National Bank, Washington; a deposit account, I don't think

it is a savings account, with the Interstate Building Association, Washington. In all of which I had a beneficial interest. I mean they were my accounts, though some of them or practically all of them were joint with my wife. Either of us could draw. These accounts were in addition to any trust or special office account which I had at 34 the same time but which I would not have what I might call a beneficial interest in. In other words, I think I am giving the entire pertinent facts in these statements.

The deposits at approximately the end of the year, because I don't keep separate bank books to give you exactly December 31 of each year, but these are approximately accurate — for the Depositors Trust Company savings account.

THE BOARD: As of what date are you giving that?

THE WITNESS: I am giving this as of December 1, 1941, \$647.19.

THE BOARD: Leave out the cents.

THE WITNESS: All right.

December 1, 1942 — \$656.

MR. UPDEGRAFF: If your Honor please, I object, until I may ask a question or two as to admissibility of the evidence. May I ask a question or two?

THE BOARD: As to what?

MR. UPDEGRAFF: The admissibility of the evidence.

I see Mr. Butler is reading from something. I would like to find out what it is first.

THE BOARD: I think you are entitled to do that.

MR. UPDEGRAFF: From what were you reading those figures?

THE WITNESS: I am reading these figures from a memorandum prepared in my office and taken from either pass books or bank statements.

35 MR. UPDEGRAFF: Who prepared the statement from which you are reading?

THE WITNESS: My secretary prepared the statements.

MR. UPDEGRAFF: I object, if your Honor please, on the ground the bank statements are the best evidence.

THE BOARD: I sustain the objection, but I think that memorandum would be useful if the bank statements or books are here.

* * * *

THE WITNESS: Then I offer in evidence Depositors Trust Company, Wiscasset, Maine, savings department pass book No. 121 in the names of Henry F. or Estelle K.

36 Butler, showing a mailing address of 719 Investment Building, Washington, D. C., which was my mailing address in 1934 and '35 at least, for the purpose of showing the balances and the activities during the years 1941, 1942, '43, '44 and '45.

* * * *

THE BOARD: Let it be marked Petitioners' Exhibit 22 in evidence.

THE WITNESS: I offer in evidence Savings Department Book of the First National Bank of Bath, Maine, No. 8728, an account with H. F. Butler or Estelle K. Butler for the purpose of showing the activity and balances of that account in the same years.

* * * *

THE BOARD: Let it be marked Petitioners' Exhibit 23 in evidence.

* * * *

THE WITNESS: I offer in evidence Yonkers Savings Bank of Yonkers, New York, pass book No. 68203, in the name of Henry Franklin Butler or Estelle K. Butler for the same purposes.

* * * *

37 THE BOARD: * * *

Very well, let it be marked Petitioners' Exhibit No. 24 in evidence.

* * * *

THE WITNESS: I offer pass book of Interstate Building Association, Washington, D. C., No. E-4274 in the names of Henry F. Butler or Estelle K. Butler for the same purposes.

* * * *

38 THE BOARD: Let it be marked Petitioners' Exhibit No. 25 in evidence.

* * * *

THE WITNESS: In the account of Henry F. or Estelle K. Butler with the State Street Trust Company of Boston, Mass., the balance on December 31, 1941, was \$1,048 omitting the cents. On December 31, 1942, it was \$128. I do not have subsequent statements as I have
39 had no transactions since the latter part of 1942 in that bank, and with a balance of \$128 as of July 1, 1943, and since then.

* * * *

THE WITNESS: In connection with the assessment of taxes in Maine, I know and I testify of my own knowledge that the towns are permitted, but not required, to assess various different kinds of personal property, tangibles and intangibles. The town of Woolwich has on various occasions posted lists of taxable personal property —

* * * *

40 THE BOARD: Do you want to finish your statement?

THE WITNESS: The town of Woolwich does not assess intangible personal property to the inhabitants.

THE BOARD: You mean that is permitted by law that each town should make its own determination what it assesses and what it does not?

THE WITNESS: Yes.

THE BOARD: I will not take your oral statement on that without citation of applicable statute.
41

THE WITNESS: May I furnish the citation?

I haven't it right here, but may I furnish it to your Honor?

THE BOARD: Yes.

THE WITNESS: May I submit in evidence the report of the Town of Woolwich, Maine, for the year ending February 15, 1944, to show the Assessor's report which appears on pages 11 and 12, showing the evaluation of the town and the property assessment.

THE BOARD: Is your name on the list?

THE WITNESS: No, this is a list of tax evaluation of the town, not a list of tax payers.

THE BOARD: Why is that material here?

THE WITNESS: To show that there is no intangible personalty assessed to any one. The town does not assess intangible personal property.

* * *

THE BOARD: * * *

42 (The document referred to was marked Petitioners' Exhibit No. 26, and received in evidence.)

THE WITNESS: Also I testify that it has been my consistent intent and purpose not to establish a permanent home in the District of Columbia. And my further intent and purpose to establish my permanent home, voting residence, domicile, in Woolwich, Maine. And that intent has been in my mind when I have been in Maine.

In this testimony I do not mean to say, and I don't wish it understood, that I do not like or have any dislike for the District of Columbia. I am very fond of this city. I will be frank in saying my motivating principle within my mind is that I prefer to have my home and my domicile in a place where I can vote and exercise my franchise and have national representation.

I hesitate to say that I expect to return to Maine permanently at a fixed time because I think that is irrelevant. I periodically return to Maine. I would never want to live any place twelve months a year.

I expect to make my residence in Washington less as the years go on, and I hope I will never be unable to come to Washington occasionally.

I state this at length because I am not trying to build a case. I am trying to put in the truth of this matter. That is all.

43

Cross Examination

BY MR. UPDEGRAFF:

Q You say that you do not dislike the District of Columbia?

THE BOARD: I don't think that is important.

MR. UPDEGRAFF: If your Honor please, I do.

May I proceed in my own way unless I get too far afield?

THE BOARD: Go ahead.

BY MR. UPDEGRAFF:

Q You say you do not dislike the District of Columbia, Mr. Butler. You have been living in the District of Columbia since the year 1934, haven't you? A I have been here at various times since the year 1934.

Q At the time the United States Court of Appeals decided the case of Henry F. and Estelle K. Butler versus District of Columbia, 80 U. S. Appeals D. C. 310, which involved you and the other party here, your wife, did you agree with that decision?

* * * *

44 MR. BUTLER: Your Honor, I object. I think that is irrelevant. That is the decision of the court.

THE BOARD: I sustain the objection.

* * * *

BY MR. UPDEGRAFF:

* * * *

45 Q On December 16, 1940, you wrote a letter to the Selectmen of Woolwich, Maine, I believe your testimony was, Petitioners' Exhibit No. 1.

In that letter you state:

"Last summer I told you my wife, Estelle K. Butler, and I desired again to be registered as residents, domiciliaries and voters in the town of Woolwich, Maine."

Since December 16, 1940, did you write any other letter to the Selectmen of the Town of Woolwich, Maine, in that category, similar to Petitioners' Exhibit No. 1? A I don't think so.

Q You know, don't you? A No, I don't know, without going through my file. I don't think so. And I am giving you a fair answer.

Q Now, referring to Petitioners' Exhibit No. 3, signed by Edward V. Reed, who states he is the Town Clerk of Woolwich, Maine, it appears that Mr. Reed executed Petitioners' Exhibit 3 on the twenty-third of December, 1948.

46 Did Mr. Reed do that of his own accord, or did you or somebody else ask him to do that? A I requested the statement.

Q And how did you request the statement? Orally or in writing? A I requested an attorney friend of mine in Bath, Maine, to obtain the statement for me.

Q You had no communication of any nature with Mr. Reed who made this affidavit in Petitioners' Exhibit No. 3?

• • • • •

THE WITNESS: I don't know without looking at my file. I don't think I communicated directly with the Town Clerk.

BY MR. UPDEGRAFF:

Q Did you in any way by letter, telephone, or orally inform Mr. Reed, the person who executed Petitioners' Exhibit No. 3, that the United States Court of Appeals for the District of Columbia had on January 14, 1946, decided that you and your wife, Estelle K. Butler, were domiciled in Cambridge, Massachusetts, on December 31, 1940?

47 A As of what time are you talking about?

Q At any time. A At any time?

Q Since that decision was handed down. A * * *
As far as I know I did not write him any such thing as this or tell him recently. I very probably did tell him that shortly after the decision, but I don't know.

Q You didn't tell him about it just prior to his execution of Petitioners' Exhibit No. 3 on December 23, 1948?

A I did not.

Q Do you know, Mr. Butler, who prepared Petitioners' Exhibit No. 3? Who wrote it? A I don't know.

Q Do you know who prepared Petitioners' Exhibit No. 4, which is affidavit of Mr. Walter E. Reed, the Tax Collector of the Town of Woolwich? A I do not know.

Q Did you discuss at any time with Mr. Reed, the Tax Collector of Woolwich, your liability for intangible taxes in the State of Maine? A I discussed with one of the tax collectors, whether it was Walter Reed at that time or his predecessor, I don't know.

48 Q When? A Probably late in '41 or in '42 and '43.

Q You didn't discuss that matter with any of the tax collectors of Woolwich, Maine, after the decision of Butler versus District of Columbia, January 14, 1946? A No, I don't think I did.

Q During each month of the calendar years 1941 up to the present time, has there been any one month of any one year that you have physically not resided in the District of Columbia? A Yes. There have been months when I have not physically resided in the District of Columbia.

Q When? A I am not certain when. I am not certain at all of the occasions, but I can tell you definitely — I think I am correct.

Your Honor, this is evidence which I would have to verify somehow.

I think I am correct in stating that in the fall of 1945, I was physically away from the District of Columbia for the entire month of October.

Q That is the only time you can recall? A For the entire month. I may have been in the District one day during October in that year, and I may have been away more than a complete thirty-day month in other years.

I don't know.

49 Q What do you do when you go on vacation, briefly? Or do you take a vacation each year? A During the war years few of us could take scheduled vacations.

THE BOARD: That isn't the question that was asked. He didn't ask whether you took scheduled vacations; he asked whether you took vacations.

THE WITNESS: Yes, I take vacations.

BY MR. UPDEGRAFF:

Q Did you take a vacation in 1944? A Yes.

Q Where did you go? A Where? Went to my home in Maine.

Q Did you take a vacation in 1945? A Yes.

Q Where did you go? A I went to my home in Maine, and I went to South America.

Q When did you go to your home in Maine on that vacation? A In August.

Q Did you take a vacation in 1943? A Yes.

Q Where did you go? A Went to Maine, my home in Maine.

* * *

50 Q What part of Maine? A Woolwich, Maine.

I may have gone other places also. You are asking me for the precise places in your questions and I am trying to answer them rather than being stuffy in objecting.

Q I want you to try to answer these questions. A But if I say "I don't know," it is because I don't know.

* * *

BY MR. UPDEGRAFF:

Q Mr. Butler, some time in 1940 or 1941, you and your

wife decided to buy some property in the District, did you not? Real property? A That is right.

Q When was that, if you can recall? A In December, 1941. We entered into the contract to purchase 1671 Thirty-first Street to which I took title — excuse me, that is your answer.

Q When was the deed executed conveying that
51 property to you? A In January, 1942.

Q Was that property conveyed to you and Estelle K. or just to you? A My recollection is it was conveyed to both of us.

Q When did you move into that place? A January '42.

Q That is 1671 Thirty-first Street? A That is right.

Q Can you give the Board sort of a physical description, starting at the basement and going to the top of the roof of that premise?

* * * *

THE WITNESS: The house has a basement, with a basement kitchen and service rooms.

First floor with a living room, dining room, pantry, kitchen equipment in it.

The second floor, a small room I call "office"; sitting room, two bedrooms, two baths.

Third floor, front room that is now used for storage. One large bedroom and bath. When I say "large," I mean in comparison to two very small bedrooms and a bath.

* * * *

52 Q You and your wife have been physically residing in the premises: 1671 Thirty-first Street, Northwest, in the District of Columbia, since 1942, January 1942, have you not? A That is right, when in the District.

Q You have been in the District of Columbia all of the time, living at that place, except when you went on your vacations, you testified, to Woolwich, Maine, and

South America. A I have not testified to that. You asked where I went on vacation.

Q Isn't that true? A No, I have been out of the District on numerous occasions.

Q Do you have a home in any other place beside in the District of Columbia? A I have a home in Woolwich, Maine.

Q You don't have a home, what you call a home, in the District of Columbia? Is that what you are trying to convey? A That is what I am trying to convey if you construe "home" as domicile. If you construe home as where a man says "Home is where I am," I have many homes.

THE BOARD: Let me see if I can straighten this out.

Except for vacations, such as you have described, and except for the time you spent in South America, and except for business trips, have you been out of the District during those years?

53 THE WITNESS: No. I have spent more time in the District than in any other single locality. I have been here more than seven months of each year.

THE BOARD: I don't suppose that every time you cross State lines you leave the District.

THE WITNESS: No. But I have made plenty of business trips to New York, to Boston, to Cleveland, to various other places. I think it is immaterial to this case.

THE BOARD: Well, I do, too. But those have been absences other than vacations?

THE WITNESS: I have been in Maine for purposes other than vacations.

When I have a vacation, I go down east.

THE BOARD: That is a localism. What does that mean — to Maine?

THE WITNESS: "Down East." You sail down wind to the — Labrador, and everything is down. You go "down" to Maine. From Boston, I think, you go "down" in both directions. I think Boston is the top of the world on this side.

• • • • •
BY MR. UPDEGRAFF:

Q Mr. Butler, when you negotiated for the purchase of 1671 Thirty-first Street, Northwest, D. C., what was the initial price asked, if you remember? A I
54 think in the neighborhood of \$80,000.

Q And what did you pay for it? A \$37,500.

Q You have personal property in the house since you went there in January, 1942? A Oh, yes.

Q What was the value, if you can recall, and according to your opinion, of your personal property in those premises in July of '41? A I can't answer from memory. I filed a tax return which I believe was accurate.

Q I am not thinking of a tax return now. I am asking you for your opinion as to the value of the personal property in the premises, 1671 Thirty-first Street, Northwest, in July of 1941, if you can recall. A Excuse me. Yes, nothing.

Q Take that on through July, 1942 to the present time, each year. A That, I don't know. I refer you to my tax returns.

Q What is the value of the personal property located in 1671 Thirty-first Street, Northwest, now, right today? A I don't know.

Q Don't you have any idea according to your opinion? A I object to that, when we have got returns made, and when you are asking for some precise information.

55 THE BOARD: The rule of best evidence will not apply in a situation of that sort.

Of course, if you don't know, that is your answer.

THE WITNESS: I can guess at it. Do you want me to guess?

MR. UPDEGRAFF: Never mind.

THE WITNESS: Tell me what you are trying to bring out and I will probably agree with you.

Do you want to compare the value with the value in Maine?

MR. UPDEGRAFF: Never mind, Mr. Butler.

BY MR. UPDEGRAFF:

Q Your house in the District of Columbia is completely furnished for living purposes, isn't it? A It is.

Q It isn't furnished in a cheap manner, is it? A If you mean tawdry, no. If you mean inexpensive, yes.

THE BOARD: Would you say it is furnished in a manner suitable for an \$80,000 house?

THE WITNESS: No.

THE BOARD: Would you say it is suitable for a \$37,000 house?

THE WITNESS: \$37,000 house as of today's values, yes.

* * * *

A It is comfortably furnished.

56 THE BOARD: You are not camping out?

THE WITNESS: I am not camping out, definitely.

BY MR. UPDEGRAFF:

Q Mr. Butler, you testified you had an automobile in Maine. When did you take it to Maine? A I purchased it in, speaking of my best recollection, I purchased it in Boston in '41 and took it into Maine and left it in Maine.

Q When did you take it to Maine? A I just said my best recollection is in 1941.

Q That is the time you purchased it? A Yes.

Q What did you pay for that automobile in 1941? A I don't remember, but it was a used car. It was not expensive. My recollection is that it was less than \$300.

Q You had an automobile registered in the District of Columbia at the same time, did you not? A At the same time, that is right.

Q What make was that? A Studebaker.

Q When did you buy it? A I bought it in the spring of '41.

Q How much did you pay for it? A My recollection is \$1300.

Q You had a driver's license in the District of
57 Columbia at that time, did you? A I did.

Q Have you had a District of Columbia operator's permit ever since that time? A I have.

Q Have you had an automobile registered in the District of Columbia ever since 1940? A Yes.

Q Referring to Petitioners' Exhibit No. 14, which is a letter from Mr. Merrick, the Administrator, Tax Division, in the Assessor's Office, that letter reads:

"We acknowledge receipt of your letter of April 15, 1942, and inasmuch as we believe that the papers submitted establish your claim of domicile outside the District of Columbia on the last day of the taxable year 1941, your check of \$654.23 and Mrs. Estelle K. Butler's check of \$14.11 are returned to you herewith."

Now, Mr. Butler, you didn't tell the Assessor of the District of Columbia, and particularly Mr. Merrick, about this big house you bought in the District in connection with that matter of exemption from income tax in 1941, did you? A In 1941, I didn't have that house.

Q No, I didn't ask that. Read the question, please. A I don't know whether I did or not. You have the statement that I filed there, and that is the best evidence
58 as to what I told him.

Q Mr. Butler, will you please answer my question? You have counsel sitting there. A I don't know.

Q Now, I hand you what purports to be a claim for refund of Henry F. Butler executed under oath on April 15, 1942, with a statement attached thereto, and ask you if you can identify it. (Handing document to witness)

A That is right.

Q What is it? Is that your claim for refund for 1941 District of Columbia income taxes? A Yes.

THE BOARD: Doesn't it show on the face what it is?

MR. UPDEGRAFF: I want to be sure this document, your Honor, is identified as the witness'.

THE BOARD: He has identified it as his.

THE WITNESS: That is right.

BY MR. UPDEGRAFF:

Q Attached is typewritten statement unsigned consisting of some five pages. A That is part of it.

MR. UPDEGRAFF: May I have this marked for identification as Respondent's Exhibit A.

* * * *

59 Q Now, did there come a time, Mr. Butler, when the District officials in the Income Tax Division told you either orally or in writing that they did not consider you to be exempt from District income taxes beginning in 1939? A I believe so.

Q Now, I have called upon you to produce, Mr. Butler, a letter from Mr. Brooke dated August 11, 1944.

Do you have that letter?

A Yes, I have.

* * * *

MR. UPDEGRAFF: May I have this letter of August 11, marked for identification as Respondent's Exhibit B, please?

THE BOARD: It will be marked.

* * * *

BY MR. UPDEGRAFF:

Q Do you have bank statements for the District banks which I called upon you to produce? A I think that is the complete record of the National Savings and Trust. And I think this is the complete record of Riggs.

Q The statements which you have handed me, issued by the Riggs National Bank and those of the Na-
60 tional Savings and Trust Company are the only bank statements of the District of Columbia banks other than those which you have jointly with your business partners, is that correct? A Yes, other than those I have jointly with business partners or in which I am a fiduciary, an executor, or something, and other than my office account which was joint with my father and con-

tinned as that type, but from which whenever I take anything I check it into one or the other of my personal accounts, not necessarily either of these two.

THE BOARD: What is that? Are you a member of a partnership?

THE WITNESS: No, I am not a member of a partnership. But I am associated with several other people, and those funds may involve fees in which they have an exclusive interest or a large share. They may involve clients' fees.

THE BOARD: Clients' fees?

THE WITNESS: Excuse me. Clients' funds.

THE BOARD: In transit?

THE WITNESS: In transit, and very rapid transit.

MR. UPDEGRAFF: May I have these bank statements of the Riggs National Bank in the names of Mr. Henry F. Butler, Special, and/or Mrs. Estelle K. Butler, Special, dated from December 31, 1940 to January 17, 1946, marked for identification as Respondent's Exhibit C?

THE BOARD: It will be marked.

* * *

61 MR. UPDEGRAFF: And may I have marked as Respondent's Exhibit D for identification, bank statement issued by the National Savings and Trust Company in the name of Mr. Henry F. Butler or Mrs. Estelle K. Butler, dating from December 31, 1940 to December 31, 1945.

THE BOARD: It will be so marked.

* * *

BY MR. UPDEGRAFF:

Q Now, Mr. Butler, I hand you a letter signed "Henry F. Butler," dated July 21, 1943, with an enclosure containing statement of Henry F. Butler supplemental to information previously submitted to the Assessor of Taxes, D. C., re calendar years 1939 and '40, together with a copy of letter to Mr. Butler, signed "Mr. Brooke," dated July

26, 1943, and ask you if you can identify them. A Yes, I identify those.

Q You received, did you, the original of the letter from Mr. Brooke, dated July 26, 1943, copy of which is attached? A I assume I did from the return receipt.

MR. UPDEGRAFF: Will you mark these, please, for identification as Respondent's Exhibit E?

THE BOARD: It will be marked.

62 (The documents referred to were marked Respondent's Exhibit E, for identification.)

BY MR. UPDEGRAFF:

Q I hand you, Mr. Butler, a letter dated April 15, 1942, signed by Henry F. Butler, and ask you if that is the letter to which Petitioners' Exhibit No. 14 is a response?

A I assume it is.

Q You don't recall having written two letters on April 15? A No. The reason I say I assume is because of the contents of this letter. But I assume it is the letter. As far as I know it is.

MR. UPDEGRAFF: Will you please mark this for identification, Respondent's Exhibit F?

(The document referred to was marked Respondent's Exhibit F, for identification.)

BY MR. UPDEGRAFF:

Q Do you know your wife's signature, Mr. Butler? A I know it fairly well.

Q May the record show that Mrs. Estelle K. Butler is sitting here, one of the petitioners.

I hand you, Mr. Butler, what purports to be a claim for refund signed by Estelle K. Butler, involving the calendar year 1941, with a supplemental statement attached,

and ask you if you can identify it. A It certainly looks like it. She is sitting here.

63 THE BOARD: As her attorney, why don't you admit it?

MR. BUTLER: I admit it.

MR. UPDEGRAFF: May this be marked for identification as Respondent's Exhibit G.

(The document referred to was marked Respondent's Exhibit G, for identification.)

BY MR. UPDEGRAFF:

Q Mr. Butler, on December 30, 1940, where do you contend that you were domiciled? A On December 30, 1940?

Q December 31, 1940.

THE BOARD: I do not think that question is open. Isn't that determined by the decision of the Court of Appeals?

MR. UPDEGRAFF: That has been my contention, but I understood your Honor to leave in all this evidence before the year.

THE BOARD: Only as shedding light on subsequent years.

My firm disposition is to say for the purpose of this case domicile of this party as of December 31, 1940 is fixed.

MR. UPDEGRAFF: Very well, I withdraw the question.

BY MR. UPDEGRAFF:

Q Mr. Butler, I hand you what purports to be letter signed by you to various tax officials of the District government; one dated February 13, 1942 and another dated April 8, 1943, another dated July 31, 1943, two dated 64 July 31, 1944, one dated August 11, 1944, one dated October 14, 1944, one dated July 22, 1946, and one dated June 28, 1946, and ask you if you wrote those letters to the Assessor. A I identify all of the letters signed by me as having been written by me, but that does not go to the attachments which were not signed by me and were not referred to in the letters. Nor does that go to the script on the bottom of the letter of October 14, 1944, not in my handwriting.

Q But you admit the authenticity of the typewritten letters? A That is right.

MR. UPDEGRAFF: May these be marked for identification as Respondent's Exhibits H through P?

THE BOARD: They will be so marked.

(The documents referred to were marked Respondent's Exhibits H, I, J, K, L, M, N, O, and P, for identification.)

BY MR. UPDEGRAFF:

Q I hand you what purports to be a claim for refund executed by you and Estelle K. Butler on August 1, 1946, with respect to 1941, 1942, 1943 — rather, 1942, '43, '44, and '45, District of Columbia income taxes, and ask you if that is the document you filed to obtain refund of taxes in this case? A I admit that.

65 MR. UPDEGRAFF: May this be marked Respondent's Exhibit Q for identification?

(The document referred to was marked Respondent's Exhibit Q, for identification.)

BY MR. UPDEGRAFF:

Q Now, Mr. Butler, referring to Respondent's Exhibit H for identification, attached to which is a carbon copy of a letter, addressed to you, dated February 11, 1942, which is referred to in your letter, do you have the original of the letter? A I assume I have.

THE BOARD: If you will consent to the admission of the carbon.

MR. UPDEGRAFF: It is all right with me if he wants to consent to the carbon.

THE WITNESS: I will consent to that.

MR. UPDEGRAFF: Carbon copy of letter attached to Respondent's Exhibit H being a part thereof per agreement.

MR. BUTLER: That suits me.

BY MR. UPDEGRAFF:

Q I hand you Respondent's Exhibit P, to which is attached a carbon copy of a letter dated June 20, 1946 to you, and ask you if you have the original, or if not, whether you object to the copy being a part of said exhibit? A I admit that.

66 MR. UPDEGRAFF: Then that copy will be considered a part of Respondent's Exhibit P.

BY MR. UPDEGRAFF:

Q Referring to Respondent's Exhibit M for identification, Mr. Butler, you admit, do you not, that the carbon attached thereto was a part of and goes with that letter?

A That is right.

Q Mr. Butler, referring to Respondent's Exhibit N for identification, there is attached between your letters of August 10 and October 14, 1944, a copy of a letter to you dated August 11, 1944, from Mr. Brooke, and I ask you to produce the original of that letter or admit the authenticity of the copy. A Isn't that the one I have already given you?

Q That may be.

THE BOARD: To what exhibit is it attached?

MR. UPDEGRAFF: It is part of an exhibit, your Honor, N, I believe it is.

THE BOARD: Let him answer it again.

THE WITNESS: It is the same one.

BY MR. UPDEGRAFF:

Q You admit that chain of correspondence represented by Respondent's Exhibit N relates to Respondent's Exhibit B, which is the original of the copy? A That is right.

Q Now, Mr. Butler, do you attend church anywhere?

A Yes.

67 Q In the District of Columbia do you attend church anywhere? A Yes, when I am here on certain occasions I attend church.

Q Did you attend church during the years 1941 to 1945 inclusive in the District of Columbia? A At various times.

Q And did you contribute to the churches when you attended in the District? A I usually put something in the plate.

Q Did you attend any churches in Maine during the years 1941 to 1945, inclusive? A I assume so, yes.

Q Where? A Wiscasset, Maine, which is the town next to Woolwich. Alna, Maine, which is further on. I think, in Woolwich, Maine. I am not sure whether in Bath.

To answer your question, principally in Wiscasset.

Q Did you make any contributions in the plate while there? A Yes.

THE BOARD: Where? Wiscasset or the other places?

BY MR. UPDEGRAFF:

Q In Maine? A Yes, each church I attended, I assume.

68 Q Were you a member of any club in the District of Columbia during the years 1941 up to the present time? A Yes.

Q What clubs? A University Club on Sixteenth Street, Metropolitan Club on H Street. Maine State Society.

Q That is not a club, is it? A I don't think it is a club. You mean clubs with houses? A Yes, like the Metropolitan and University. A Those two, I think, are all.

Q What kind of a membership did you have in the Metropolitan Club? A Resident.

Q And what kind of a membership did you have in the University Club for those years? A Life.

Q Both clubs also have non-resident memberships, do they not? A I suppose they do, but not available to a person who spends, who resides thirty days or more in the District. I think that is the rule. I don't have the club rules with me. Or within twenty miles of the District, I think.

Q Do you attend any social functions in the District of Columbia, during the years 1941 up to the present time?

69 THE BOARD: I met him at a cocktail party once.

THE WITNESS: I think more than once.

THE BOARD: Possibly.

THE WITNESS: I don't mean to quibble. When you say "social functions," what do you mean?

THE BOARD: I know the man doesn't live here as a hermit. If he denied it, I wouldn't believe it.

THE WITNESS: That is right.

MR. UPDEGRAFF: Very well, that is sufficient for me.

BY MR. UPDEGRAFF:

Q Where do you contend you were domiciled, Mr. Butler, during the years 1941 up to the present time? A Woolwich, Maine.

Q And when do you intend to go back to Woolwich, Maine? A Probably March of this year.

Q To remain there, make your home I mean. A My home is there. I don't expect to stay there and not leave Woolwich, Maine, again.

Q What I am trying to get at, Mr. Butler, is when do you expect to pull up stakes in the District of Columbia, get rid of your law practice, and your home here, and go back to Woolwich and live, physically reside there permanently? A I think that is an impossible question to answer.

MR. BUTLER: I object. I can answer that question with qualifications, but not in the form stated. It
70 is pregnant with implications.

THE BOARD: What?

MR. BUTLER: I say I can explain what I plan to do, but to answer the question in the form it is given is pregnant with implications that are not intended.

THE BOARD: As a matter of fact, I think you answered it on your direct testimony.

MR. BUTLER: I think I did, too.

THE BOARD: I think you can answer the question and make such explanation as you choose.

THE WITNESS: My answer is that I don't think it is a question of going back to Maine. I maintain a home in Maine. I go there the same as anybody goes to any home of his own.

THE BOARD: Wait a minute, that is not the question. The question was, when do you intend to give up your practice in the District, discontinue your home here, and go to Maine to remain there permanently as distinguished from maintaining a place of abode in the District. I don't think he is trying to trap you.

THE WITNESS: I don't think he is.

MR. UPDEGRAFF: If your Honor please, I see what Mr. Butler has in mind. I am not trying to trap him. I will rephrase that.

BY MR. UPDEGRAFF:

Q Instead of saying when do you intend to do that, do you ever intend to do it, or do you intend ever to do it? A I sincerely hope that I will never have to give up my practice wherever it may be. I had matters in the District of Columbia while I was practicing in Boston. I would expect to continue to have matters in the District of Columbia no matter where I am practicing in the United States. It is a Federal practice with which I am familiar. If the seat of government moved to some other place, I move with it, for the practice.

Now, I have matters that I have attended to in Maine. I have gone to Maine for the express purpose of attending to law matters in Maine, and it is impossible to say that I expect, or to state when I expect to what you call "pull up stakes" from Washington and live permanently in Maine.

The question is not susceptible to answer. I expect to spend considerably more time in Maine and less in Washington than during the war years, commencing now, or having already — well, commencing and building up. But I can not say that I ever expect to pull up stakes from any place and settle permanently in another.

I will say that I maintain my home in Maine, and I go there whenever I can. I return there whenever I get a chance for business or pleasure, and I will do it more and more.

Q And that situation with respect to your Maine residence has continued over the years since 1921, is that
72 correct; you go back all the time to Maine? A Yes.

Q You have the same feeling now of going back as you did in 1921? A Feeling develops in forty-odd years. I don't know what you are driving at. You are after the legal question: when do you expect to return to the place I maintain my domicile? My answer is I am maintaining a home there now, and I expect to spend more time there as opportunity presents itself. The World War interfered with the plans of most of us.

Q Mr. Butler, we will let it go at that.

* * * *

Redirect Examination

THE WITNESS: I am also a member of the Princeton Club of New York, of the National Republican Club of New York, the Maine State Society in the District of Columbia. I think those are the principal other clubs outside this jurisdiction.

And I also contribute to many charities outside the District of Columbia and set forth in the income tax
73 returns, my Federal income tax returns which I have had admitted for all purposes, and to which I refer.

I think those charities are not included in the District of Columbia returns, or more recent ones, because they wouldn't be allowed if I am taxable here.

* * * *

THE BOARD: Let me ask a question or two.

You testified, I think, that in 1945 there was one month when you did not spend any part of the month, or only one day perhaps in the District. Was that the year you went to South America?

THE WITNESS: That is my recollection.

THE BOARD: Let me ask you this: In your direct examination you testified that in the year you went to South America you did not go to Maine.

THE WITNESS: I beg your pardon, I said I was in Maine.

THE BOARD: I thought you said to conserve money you did not go to Maine.

THE WITNESS: I said I thought I was there only once.

• • • •

74 THE WITNESS: I was there in August. I was there before we went to South America. I was in Maine at the time of the Japanese surrender because we celebrated.

• • • •

75 *Cornwell B. Rogers*

was called as a witness for and on behalf of the petitioners and, having been first duly sworn, was examined and testified as follows:

Direct Examination

BY MR. BUTLER:

Q Will you please state your name and address. A Cornwell B. Rogers, Woolwich, Maine.

Q Have you known the two petitioners in this case, Henry and Estelle Butler, for some years? A Yes, that is true.

Q How long have you known me? A I have known you since 1916 at Princeton.

Q And Estelle? A Since 1921.

Q When did you first come to the town of Woolwich, Maine, in any capacity? A 1921.

76 Q In what basis? A I came to Maine to engage in orcharding and other farm activities. That was from college.

Q And where did you stay when you were there then? A In the household of Mr. Butler's father.

Q Eventually, did you buy a place in Maine? A I bought a place in Maine in 1925.

Q Where? A In Woolwich.

Q How near to our place? A Within a mile and a half, or two and a half.

Q Have you been there frequently since then? A I have been there frequently.

Q You gave that as your address. Is that your permanent residence? A It is.

Q Do you vote in Maine? A Yes.

Q In Woolwich? A I do.

Q Are you familiar with our house? A I am.

Q You are familiar with the furnishings in it? A I am.

Q Will you state briefly how the house is furnished, the nature of the furnishings? A It's a house that is furnished in Colonial type of antique furniture. It is completely appointed, I would say, in every way.

Do you wish a detailed account?

Q No, not detailed, but is it furnished as a temporary summer place or is it furnished for permanent living, in your opinion? A It is furnished for permanent living. It has everything that a year-around home would have, and it is large, commodious, well furnished, and completely appointed.

Q Would it be good for living in winter time as well as in summer time, as far as you know? Have you had any experience there? A I would say it would be a place of unusual comfort for anybody living in Woolwich in winter. It would be outstandingly a winter place.

Q Can you testify of your own knowledge whether or not I and my wife were in Woolwich, Maine, at any time or various times during each of the years 1941, '42, '43, '44, and '45; and if so, which years, and if not, which years would you not be certain of? A My impressions would be each year. But I don't have an exact picture of those war years. Offhand, if asked, that would be my impression.

Q Can you state we were there during some of
78 those years, definitely? A Well, I would state off-
hand you were there during all of those years. An
impression. I think if I refresh my memory I could per-
haps give the basis for that. I don't like to name one
year.

Q I am not asking you to name the year. Do you know
we were there some time? Were you there at the same
time we were during any of those years? A Oh, yes.

Q Have you been entertained at our house? A Yes,
over a long period of years.

Q Now, limiting this to these particular years, was it
normal home living, or was it summer camping out? A
It is normal home living, with everything that goes with
that. By that I mean a room for guests and such friends
and entertaining that would go with a settled life.

Q You have been at our house for dinner with guests
from away who have come there and so forth, have you
not? A I have been.

Q Have either I or my wife said anything in your
presence to which you can testify of your own knowledge
in regard to our intentions to make Maine a permanent
home, a domicile? A I don't understand that exactly.

The reason I don't understand that is that my feeling
is it has been a permanent home since — that it was
79 in 1921 a home at the time of your marriage. So
there wasn't any question of intention there. It
was a thing I accepted as the situation.

* * * *

Q Do you have any direct knowledge as to whether or
not my wife and I have ever voted in Woolwich, Maine?
A Yes, I do.

Q What does that relate to? Can you remember the
circumstances? A Well, I can remember the discussion
of campaigns, and the fact that I voted and knew you
voted. I know you attended Town Meetings.

Q You say that you are a resident of Maine. Do you vote in Woolwich? A Yes.

80 Q And pay taxes in Woolwich? A Yes.

Q Have you ever been assessed for an intangible property tax in Woolwich? A No.

Q Do you know of any one who has been? A No.

* * *

Cross Examination

BY MR. UPDEGRAFF:

* * *

Q And where did you say you live, Mr. Rogers? A Woolwich, Maine.

Q How long have you lived there? A Since 1925. That is to say that has been my home.

Q You physically resided there? A No. I am a teacher. I have physically resided in quite a number of places.

Q Between the years 1940 and the present time, where have you physically resided? A In 1940 until through most of the war years I was residing at New York City and teaching at Columbia University.

Between semesters and whenever possible I used to get to Woolwich.

Q About how often during the period between
81 1940 and the present time did you go to Woolwich?

A Well, 1948. This last year I have been working for the American Red Cross in Washington. I have been three times this year, and I think it would vary, but two times or more than two times even from Columbia, I would say.

Q You wouldn't be able to state how many times from your own personal knowledge Mr. Butler or Mrs. Butler were in Woolwich during the years between 1940 and now, would you? A No, for this reason: my knowledge of the Butlers in Woolwich goes back to 1921. There is a long period of association, and going there I take for granted

I hope to see them. If I don't see them, I do the next time. I have nothing systematic of an impression like that. I would repeat my impression that the Butlers have been there each of those years.

Q But you don't know of your own personal knowledge?

A Well, sir, I would say that I have the feeling I could establish it, that they had been there each of those years. I mean I keep correspondence and I could recall my recollection. My wife keeps a diary. I think if I am permitted to go into it, I could state that I could affirm definitely they had been there each of those years. I mean those were the war years and I was teaching at Columbia. My impression is of that.

THE BOARD: Were you there each of those years?

THE WITNESS: Yes, sir.

.

82 THE BOARD: I am asking how many days you spent in Maine.

THE WITNESS: Between semesters would be about five on a trip.

THE BOARD: How many times a year would that be?

THE WITNESS: That would be either two or three in those years.

THE BOARD: And what time of the year were they?

THE WITNESS: It would be in June, the end of June, and the end of October, between the sessions, and I think it would be two trips during those years.

THE BOARD: What part of June?

THE WITNESS: The last few days of June on that accelerated schedule.

THE BOARD: What part of October?

THE WITNESS: The last few days of October.

.

BY MR. UPDEGRAFF:

83 Mr. Rogers, you keep stating it would be your impression thus and so as to Mr. Butler's trips to Woolwich.

Were you requested to come here and testify on behalf of Mr. Butler? A Yes.

Q And didn't Mr. Butler tell you what he expected you to testify to as to his presence in Woolwich, and so on? A He told me the occasion of this inquiry but I didn't go so far as to check permanent records to bring any evidence of that sort.

Q You mean to say you keep a record of every time you meet somebody, maybe once or twice a year? A Well, sir, it's perfectly plain if I know I am going to be in Maine I tend to correspond with my friend, Mr. Butler. What I said before was that I saved letters and copies of carbons of any letters I have typed, and from that sort of thing I said I think it would be evident that in each of the years we had either met or that I had known of his being there.

Q When was the last time you were in Mr. and Mrs. Butler's house in Woolwich, Maine? A I would say 1947.

Q When was the time before that? A I would say '46.

Q Have you been in there every year since 1921? A With few exceptions.

84 Q When you wrote to Mr. Butler, did you write to him addressed to the District of Columbia or to Maine? A Depending on his whereabouts at the time.

Q Have you ever been in Mr. and Mrs. Butler's home in the District of Columbia at 1671 Thirty-first Street, Northwest? A Yes.

Q When? A Very recently.

Q When approximately? A I think yesterday was the last time.

Q Between January 1942 and yesterday, were you in the house at 1671 Thirty-first Street? A Yes, indeed.

Q How often? A Oh, several times. Perhaps two or three times a month. We were college classmates, and I go in whenever I can go in.

Q That is fine.

Now, comparing the house and furnishings in Woolwich owned by Mr. and Mrs. Butler and the house and furnish-

ings of their home at 1671 Thirty-first Street in the District, which would you say was more completely appointed, the one in the District or the one in Woolwich? A Well,

I would say that the appointments are complete
85 in both places.

* * * *

Q Do you have an opinion as to the value of the personal property in Mr. Butler's house in Woolwich, Maine?

A I have this impression: It's what we call Early American antique furniture.

* * * *

Q My question is: Do you have an opinion as to the value of that property? You can answer that "yes" or "no". A No.

Q You don't have an opinion? A No.

Q Do you have an opinion as to the value of the household furnishings and other personal property in the Butler's house here in the District of Columbia at 1671 Thirty-first Street? A No, I do not.

* * * *

Redirect Examination

BY MR. BUTLER:

Q Mr. Rogers, I understood you to testify that you had been in our house every year since 1921. By that did you mean the same house? A If I said that, I would like to change it. I thought the question was how often had I been in the house in Maine, and my answer there was to the effect of practically every year.

Q My question to that is which house do you mean, the house we live in now? A Referring to —

Q The house in Maine. Do you mean the house we live in now or the house we happened to be in each year? A I see. I meant the house in which the Butlers were, whatever house they have been in in Maine. I have been a frequent visitor.

Q You have testified in regard to being, if I understood you, in the house at 1671 Thirty-first Street, and I think you said you had been in there two or three times each month since 1942. A That I must correct. I meant since recently coming to Washington with the American Red Cross.

87 Q I think also you testified you had been in Maine three times this year. A That, I must correct. I had in mind 1948.

MR. BUTLER: That is all.

Recross Examination

BY MR. UPDEGRAFF:

Q Mr. Rogers, would you be satisfied if all of your testimony would be treated with the same dignity and respect you have treated the testimony you have just corrected, would you not? Answer "yes" or "no". A Well, I would hope you would accept the corrections.

Q Unfortunately we don't know how many more corrections are to be made.

Redirect Examination

BY MR. BUTLER:

Q Do you wish to make any further corrections in your testimony? A I do not.

* * * *

Estelle K. Butler

88 was called as a witness for and on behalf of the petitioners and, having been first duly sworn, was examined and testified as follows:

Direct Examination

BY MR. BUTLER:

Q Will you please state your name? A Estelle K. Butler.

Q And address in Washington? A Washington address: 1671 Thirty-first Street, Northwest.

Q And is that where you claim your permanent home is? A No, I claim Woolwich, Maine.

Q In regard to the house in Woolwich, Maine, will you please describe it to this Board in the same general relationship as I described the house in Washington. A It's a farm house, about 250 years old, I have understood.

On the ground floor there are two halls, large kitchen, dining room, library, living room, two bedrooms, and a bath. Of course there is a cellar, finished cellar, beginning farther down.

And then the second floor has three bedrooms and two baths and two halls.

And then there is a garage, a studio, and a large barn.

I believe those are the out buildings.

89 Q How is the house furnished? A It's furnished largely in antiques, and we have more furniture there than we need. Some of it is even stored in the barn.

Q Is the house fully furnished? A Completely furnished.

Q In what style, as a camp or as a home to live in? A No, as a home. It has perfectly good rugs and nice curtains and pictures and largely antique furniture.

Q What sort of household equipment? I mean in the way of stoves, etcetera. A We have an electric range and a hot air furnace, fireplaces in every room downstairs, not upstairs.

Q Running water? A Yes.

Q Electric lights? A Electric lights. And all the things you expect to go with an electric kitchen. I mean we have percolators and toasters and things of that sort. An iron.

Q During the years 1941, '42, '43, '44, and '45, were you in Woolwich, Maine, at approximately the same times that I was there? A Yes. I was sometimes there longer than

you because you would come back to Washington for a week.

90 Q So that you have — A I have been there longer than you each year.

Q Each year have you spent at least as much time as I have there? A Yes.

Q And some years more? A Yes.

Q Do you vote, and so forth, in Maine? A Yes.

Q If you were comparing the furnishings in the two houses, how would you compare them? A I think they are the same sort of furnishings because we have bought very few things for ourselves. We have inherited large amounts of furniture and pretty good furniture. It doesn't all go together but I flatter myself that I make it look like a perfectly homogenous setup.

* * * *

Cross Examination

BY MR. UPDEGRAFF:

Q Mrs. Butler, you say that the house in Maine is over 250 years old? A Yes.

Q An old farm house? A Yes.

Q What type of construction is your house at 91 1671 Thirty-first, Northwest? A It is a mid-victorian house.

THE BOARD: He asked what type of construction, brick? Frame?

THE WITNESS: Brick here. Everything in Maine is frame.

BY MR. UPDEGRAFF:

Q What, in your opinion, is the value of the personal property consisting of your household furnishings, and so forth, in the District of Columbia house? A I have no idea.

Q What, in your opinion, is the value of the household and other equipment in your house in Woolwich, Maine? A I still have no idea. It would be difficult to put a value on

them because it is a mixture of antique and victorian that has been handed down to us, has been given to us, and it is the same sort of furnishings in both houses.

Q So far as you know neither you nor your husband has paid any tangible personal property taxes up in Woolwich, Maine, have you? A That is right.

Q You mean you have not paid any? A Have not.

Q For any years from 1940 to the present time? A Not that I know of.

Q You are one of the petitioners in this case? A Yes, sir.

92 Q You signed the verification of the petition, did you not? A I believe I did.

Q I hand you original document of the Board. Is that your signature on the verification? A It is.

* * * *

Q What do you do when you go to Maine? A I keep house, and I think that is what I do here. I seem to be a housewife.

Q There are a lot of people that go to Maine in and near Woolwich during the months of August and September each year, are there not, coming from out of the State? A Yes, I think there are.

Q They go there for vacations. A There are not a great many in Woolwich. Very few summer people in Woolwich.

Q They go there for vacations, don't they? A The majority of the people in Woolwich are year-around residents.

Q A whole lot of people go there just for the summer months. A Very few.

93 THE BOARD: In general, Maine is a summer resort, isn't it?

THE WITNESS: Wiscasset is a summer resort but Woolwich is a rural farming community.

THE BOARD: What I am getting at is Maine, with its forests and camps and shore resorts, is what is popularly known as a resort State in certain portions of it.

THE WITNESS: From the number of out-of-State cars on the road, I should judge so.

THE BOARD: You know without considering the number of cars on the road, don't you?

THE WITNESS: I am sure it must be.

THE BOARD: It has features, camps and forests, patronized by people from other States.

THE WITNESS: That is right. There are lots of camps around Boothbay Harbor.

* * *

BY MR. UPDEGRAFF:

94 Q How far is Wiscasset, Maine, where the summer resorts are, from Woolwich? A About nine miles.

* * *

Q Do you work anywhere besides being a housewife?
A No.

Q You do not? A During the war I did volunteer work all the time.

Q In the petition which you verified under oath, it is stated that the petitioners are individuals who are presently domiciliaries and legal residents of Woolwich, Maine, with offices at 1011 Investment Building, Washington, D. C. Do you have any office at 1011 Investment Building? A I claim a share in my husband's office.

Q Are you a lawyer? A No, indeed.

Q But you claim a share in his office? A Don't you think all women should?

Q I am asking the questions. Will you answer the question. A I don't get it then, I am afraid.

Q Do you claim a share in your husband's law office?
A I still don't quite know what you mean.

Q I say: do you? A I do. I think any woman—

95 Q Do you have a desk there of your own? A
No, I do not. I am not a lawyer. I have no business attachments to the office.

Q You swore under oath that you did. Do you deny it now?

THE BOARD: She tells us now, Mr. Updegraff, she claims it growing out of the marriage relation.

Is that correct?

THE WITNESS: Why certainly.

BY MR. UPDEGRAFF:

Q How much time did you spend in the State of Maine, particularly at Woolwich, during the year 1942?

THE BOARD: Do you mean Maine or Woolwich?

BY MR. UPDEGRAFF:

Q We will pin it down to Woolwich, Maine. A I have a diary in which I keep all the dates for everything, and I made a list of the times that I was in Maine during the years, and I am not sure that I even found — Mr. Butler has the list I made for him. I am not sure I even found the year 1942. It is in the house some place but I am not sure I found it.

Could I refer to that?

Q Can't you state from your recollection? A I can't recollect for the years. I know every year I have been there, at least three weeks and very often two months
96 to three months.

Q Each year? A Each year. Three weeks is the least I have been there in those years, to my knowledge. I know in 1941 we went up for two or three weeks the early part of June because it was our silver wedding anniversary, and we wanted to be there for that.

• • • •

Redirect Examination

BY MR. BUTLER:

Q Do you know whether 1941 was our silver wedding anniversary, as you testified? A It was 1921 plus twenty-five years, which would have made it 1946.

Q Do you want to change that?

THE BOARD: She has changed it.

MR. BUTLER: She didn't change the amount of time, but that is all right, your Honor.

THE WITNESS: I have changed it.

BY MR. BUTLER:

Q In regard to personal property in Maine, do we have any livestock?

Excuse me. Did we own any livestock in Maine during the years '41, '42, '43, '44, and '45? A Not to my knowledge.

97 Q Or musical instruments over \$50 in value? A No.

Q An automobile? A The Hudson.

* * * *

Recross Examination

BY MR. UPDEGRAFF:

Q Mrs. Butler, did you own any livestock in the District of Columbia during the years 1941 to the present time? A No.

* * * *

Q Do you have a piano? A No.

* * * *

Q You testified on cross examination that you couldn't express an opinion as to the value with respect to personal property in Maine.

98 Mr. Butler asked you if you had any musical instruments up in Maine over \$50 in value, and you said "no." Isn't that an opinion? A I have no musical instruments. That is the only reason.

* * * *

THE BOARD: Who owns the house in Maine?

THE WITNESS: We own it jointly.

THE BOARD: How long have you owned it?

* * * *

THE WITNESS: I think around 1926, but I am not sure.

THE BOARD: Where does the Hudson automobile habitually stay?

THE WITNESS: In the garage in Maine.

THE BOARD: Doesn't it freeze in the winter?

THE WITNESS: When we leave the place we always had the car drained.

THE BOARD: Doesn't the battery wear out?

THE WITNESS: The battery was taken to the garage in town. Then when we came back the garage man met us in our own car.

THE BOARD: What voting have you done in Maine?

THE WITNESS: I voted for everything.

99 THE BOARD: National, State, local?

THE WITNESS: Yes, sir.

THE BOARD: What years?

THE WITNESS: Every year that there has been an election.

THE BOARD: Beginning when?

THE WITNESS: Beginning in 1921 straight through. I have never missed an election for anything.

* * * *

THE BOARD: Anything else?

MR. BUTLER: Your Honor, will you ask her whether that includes the years she voted in Cambridge?

THE BOARD: She said every year.

THE WITNESS: Did you ask me if I voted in Maine every year, your Honor?

THE BOARD: Yes.

THE WITNESS: Obviously not, but I have voted every year I have been able to vote.

THE BOARD: I asked you when you voted in Maine.

THE WITNESS: I voted for two or three years in Cambridge.

THE BOARD: What years?

THE WITNESS: I really don't know. I haven't been prompted, you see, enough on my dates. I should have looked those up. They were the years we were largely in Cambridge, and we were actively in business there.

BY MR. UPDEGRAFF:

Q Mrs. Butler, when you voted in Maine did you
100 vote in the national or local election? A Both.

Q Did you vote in all? A Yes, sir, every one I knew about.

Q Did you vote every year, or how often? A Maine doesn't vote every year.

Q How often? A Every two years, we vote.

Q You voted two or three years in Cambridge, Massachusetts; is that your testimony? A Yes.

Q You don't know when they were because you haven't been prompted as to date. Is that your testimony? A I am sorry, I haven't looked those up.

Q I thought you used the words you hadn't "been prompted" as to dates. A I should have found out, but I didn't. I have not been prompted at all.

Q You never did pay any income tax to the State of Massachusetts, did you, at any time? A I don't know that.

Q Have you paid any income taxes to the State of Massachusetts since 1940 or any years subsequent thereto?
A I tell you my husband pays the income taxes. I think every husband does, and I don't know anything about them.

101 Q Do you know whether your husband paid any to the State of Massachusetts for any year subsequent to 1940? A I don't know that.

* * * *

102 MR. UPDEGRAFF:

* * * *

Have you closed your case?

MR. BUTLER: I have closed.

MR. UPDEGRAFF: I want to make a motion, your Honor.

I want to renew our motion to dismiss which we have filed in writing and which your Honor denied. I want to renew it at this time on the same basis.

I also want to move, your Honor, to dismiss this case on the ground that the petitioner has not sustained the burden of proof as to domicile, not in the District of Columbia.

I also want to move, your Honor, to affirm the assessments made against the petitioners in this case.

THE BOARD: I reserve my ruling on all the motions.

* * * *

104

George L. Penn

was called as a witness for and on behalf of the respondent and, having been first duly sworn, was examined and testified as follows:

Direct Examination

BY MR. UPDEGRAFF:

Q Will you state your name, please? A George L. Penn.

Q You are an Examiner in the Income and Franchise Tax Division of the Assessor's Office, D. C.? A Yes.

Q How long have you been in that position? A Ten years, I think.

Q I hand you a copy of a letter dated December 14, 1948, which bears the typewritten name of G. L. Penn at the bottom, and ask you what that is, if you know. A

105 That was a letter addressed by me to the Massachusetts Tax authorities inquiring as to the liability of Mr. Butler — inquiring as to what taxes he may have paid in the State of Massachusetts.

Q Did you send that letter? A Yes, sir.

Q And did you get a reply? A Yes, we received a reply.

Q I hand you letter with an envelope attached, and ask you if that is the reply you received to the letter? A That is the reply, yes, sir.

Q And is the envelope attached to the letter the one in which the letter was received? A That is right.

MR. UPDEGRAFF: I offer these two documents in evidence together with the envelope.

THE BOARD: Any objection?

MR. BUTLER: No objection.

THE BOARD: Let them be marked Respondents' Exhibits R and S in evidence.

* * * *

107 THE BOARD: You say you have two witnesses?

MR. UPDEGRAFF: Yes.

THE BOARD: Who is the other one?

MR. UPDEGRAFF: Mr. Brooke. I will make a proffer of proof as to Mr. Brooke's testimony and you may
108 accept or reject it.

I intended to produce Mr. Allen F. Brooke, Assistant Administrator of Income and Franchise Tax Division of the Assessor's Office for the District who has been in that position since 1939 when we first had an income tax law, to testify that from 1939 up to approximately the year 1944, it was the policy and practice of the Assessor's Office, Income Tax Division, to permit tax payers claiming domicile outside the District to come to the Board of Tax Appeals for one or two years withholding action on later years, which they have discontinued since then.

* * * *

MR. UPDEGRAFF: I say, my proffer of testimony is Mr. Brooke would testify if here that: it was the policy and practice from 1939 to about 1944 not to assess taxes for all past years, but to permit a taxpayer to come to the Board of Tax Appeals and test his domicile case out on one or two years. But that has been discontinued as of
1944.

109 THE BOARD: The question is: Are you willing to admit that the witness, if here, would so testify.

MR. BUTLER: Yes, your Honor, I will accede to that.

* * * *

110 MR. UPDEGRAFF: * * * *. I have some other evidence to offer.

I offer in evidence the petition filed with this Board in Docket No. 734, the Board's findings of facts and conclusions of law, and opinions and decisions in that case, and also the petition for review filed by the petitioners and the mandate of the Court of Appeals of the District of Columbia.

THE BOARD: Any objection?

MR. BUTLER: No objection.

THE BOARD: That will be received in evidence as the next exhibit.

(The document referred to was marked Respondent's Exhibit X, and received in evidence.)

* * * *

Robert J. Dunham

was called as a witness for and on behalf of the respondent and, having been first duly sworn, was examined and testified as follows:

111 *Direct Examination*

BY MR. UPDEGRAFF:

* * * *

Q Where are you employed? A The District Income Tax Division.

Q How long have you been in that capacity?

* * * *

THE WITNESS: Since the beginning of the income tax law of 1939.

BY MR. UPDEGRAFF:

Q I hand you document dated September 29, 1942, memorandum to Mr. Merrick, with the typewritten signature "R. J. Dunham" at the bottom, unsigned.

Can you tell me what that is, if you know?

* * * *

A I wrote this memorandum.

Q And who is the Mr. Butler you are referring to in that memorandum? A Mr. Henry F. Butler.

112 Q Is he the same person who is sitting here today? A Yes, sir.

Q Do you or do you not have any personal recollection aside from that memorandum as to that matter? A I do.

Q You do? A Yes.

MR. UPDEGRAFF: That is all.

MR. BUTLER: Are you offering that in evidence?

MR. UPDEGRAFF: I am offering that in evidence.

MR. BUTLER: I object to that, your Honor.

THE BOARD: What grounds?

MR. BUTLER: He is here and I think he can better testify to the contents.

THE BOARD: I think that this is the ordinary course of business. You can cross examine him.

I will admit it as the next exhibit.

(The document referred to was marked Respondent's Exhibit Y, and received in evidence.)

* * * *

Cross Examination -

113 BY MR. BUTLER:

Q This memorandum states that your conclusion previously reached "was reached on the basis of information that had been submitted with his 1941 return alone. At that time we did not have available the returns and information attached to his 1939 and 1940 returns."

Could you have obtained those returns by asking for them? A My recollection is that they came in during the period when we were receiving all of those returns.

Q What? A Coming in that period between the first of January, February, March, and April when all of our returns pile in here at once. And it is absolutely impossible to locate any returns at that time.

Q Do you recollect whether you had in front of you the

claim for refund relating to the year 1941? A I don't remember.

Q Would you have made the refund if you hadn't had it in front of you?

THE BOARD: Obviously he couldn't. And besides, there is no estoppel here. I am going to pay no attention to this evidence anyway.

The Assessor is not bound one year by conclusions made in the previous year.

MR. BUTLER: I should not think so. I want it to appear clearly on record that in the claim for refund for 1941 tax, the third paragraph of the supplemental statement which the respondent offered in evidence states "prior to January 1, 1941 I was a registered voter in the Commonwealth of Massachusetts. However, I effected a change of legal residence to Woolwich, Maine, and, as appears in the official records of the Town of Woolwich, I became a registered voter there on January 1, 1941."

Do you remember seeing any of that?

MR. UPDEGRAFF: If your Honor please, at this point I want to point out to Mr. Butler and remind your Honor that I did not introduce that exhibit to prove the truth of the statement which Mr. Butler is reading.

I introduced them to show the inconsistent statements, and I so stated.

MR. BUTLER: I am not offering this to prove the truth of the statement.

I am offering it to show it was clearly before the tax authorities of the District that there were two different domiciles.

THE BOARD: Granted there was, and granted 1941 was decided in your favor, what of it? You don't claim that would be binding on '42, '43, '44, and '45, do you?

MR. BUTLER: I don't claim the question of domicile is binding in any year.

THE BOARD: All right.

MR. BUTLER: But the question of when a domicile was established may be extremely important because unless it is changed it continues to be binding.

THE BOARD: The Assessor can make one finding one year as to the same year and another finding the next year as to the same year.

MR. BUTLER: That is right.

THE BOARD: All right, there is no use wasting time on it.

MR. BUTLER: May I at this late date offer in evidence the tax returns for the calendar year 1941 filed by these two petitioners?

THE BOARD: Any objections?

MR. UPDEGRAFF: I have no objection, except with my same qualification as to the legal conclusion.

MR. BUTLER: Accepted?

THE BOARD: All right.

(The document referred to was marked Petitioners' Exhibit No. 27, and received in evidence.)

* * * *

116 THE BOARD: I would like to ask one question of you as a witness, Mr. Butler.

Did you visit Maine more often in the years since 1940 than before 1940?

In other words, between 1941 and 1946 more often than during the period from 1934 to 1940?

MR. BUTLER: Your Honor, I would have to verify that. I think the answer is probably that I was there for a shorter aggregate period of time during the war years, '41 through '45. But I may have been there on as many separate occasions each year. It would run about the same. The war years where we were asked not to travel, not to use gasoline, and where I was trying to look after the office here with two associates in the service, I was pretty well held down to being in Washington at various times, at many times, in my practice.

THE BOARD: What do you call the war years?

MR. BUTLER: I call the war years — my recollection is the war started in December, 1941, but we were getting into it most of that year, and I would call the war years 1941 through '45.

You asked me through '46. In '46, again I was able to spend considerably more time in Maine than I had
117 been during the previous years.

* * * *

118

Petitioners' Exhibit No. 1

WOOLWICH, MAINE.

December 16, 1940.

The Selectmen of the
Town of Woolwich,
Woolwich, Maine.

Dear Sirs:—

Last summer I told you my wife, Estelle K. Butler, and I desired again to be registered as residents, domiciliaries and voters in the Town of Woolwich, Maine. However, it appeared that we had requested the listing too late to be eligible to vote in either the State or National elections; and therefore we decided to do nothing about it until after the National elections.

I am writing you this letter from my place in Woolwich, and request that you enroll Mrs. Butler and me on your list of registered voters in the Town of Woolwich, and advise us that you have done so in order that we may know we will be eligible to attend Town Meeting in 1941, and to vote in all subsequent State and National elections as long as we maintain our residence here.

If any poll tax is required in connection with such registration, please notify me and I will immediately send it to you.

We should like to hear definitely from you before the end of this year, and hence I enclose a copy of this letter so

Town of

, Maine

ETS EX. NO.

To Henry F. Butler

YOUR STATE, COUNTY AND TOWN TAX FOR THE YEAR 1945 IS NOW DUE

Interest at the rate of 5% Per Cent per annum will be charged from

July 1, 1945
Apr 1, 1945

to date of payment if tax is not paid or

before Taxes are assessed as of the first day of April in each year.

Questions relating to assessment of taxes must be taken up with the Board of Assessors.

The Collector of taxes has nothing to do with the assessment of taxes. His sworn duty is to collect all taxes, and he has absolutely no authority to change an assessment or reduce or cancel a tax.

Each partner is liable for the whole tax assessed to a firm.

An error in the name of the person taxed or an omission to make or send notice of tax bill shall not invalidate a tax or proceedings for collection and enforcement of the same.

For all poll and personal property taxes
Summons will be issued if not paid
within Ten days after such Summons with
cents for said Summons, the Collector
will at once proceed to collect Poll and
Personal Taxes according to law, causing
additional costs.

Real Estate upon which taxes remain unpaid will be advertised in December, 1945, and sold in February, 1946.

Or, the Method of Enforcing a Tax Lien on Real Estate, provided for by Public Laws 1933, Chapter 214, as amended, which creates a Mortgage on the property having priority over all other encumbrances may be used.

Or, the Method of Enforcing the Tax Lien in an action of debt as provided for in Section 28 of Chapter 14 of the Revised Statutes may be used.

Allens are assessed for a poll tax just as citizens are.

Remittance may be made by Mail and a receipt returned, if postage is enclosed.

James W. Gendron
Collector of Taxes

Received Payment

4

19

Plum Tree Lane, No. T330,
Mack Printing House, Portland, Me.

Collector

Rate of Taxation

\$ 44 - per \$1000

Poll Tax \$ 3.00

Real Estate 98 -

Personal Property -

Total Tax \$ 98 -

Interest from -

Costs -

Total Payment \$ -

Town of Woolwich, Maine

To Henry F. Butler

YOUR STATE, COUNTY AND TOWN TAX FOR THE YEAR 1941 IS NOW DUE

Interest at the rate of Six Per Cent per annum will be charged from

JANUARY 1st, 1942

to date of payment if tax is not paid on or

Before January 1st, 1942

Taxes are assessed as of the first day of April in each year.

Questions relating to assessment of taxes must be taken up with the Board of Assessors.

The Collector of taxes has nothing to do with the assessment of taxes. His sworn duty is to collect all taxes, and he has absolutely no authority to change an assessment or reduce or cancel a tax.

Each partner is liable for the whole tax assessed to a firm.

An error in the name of the person taxed or an omission to make or send notice of tax bill shall not invalidate a tax or proceedings for collection and enforcement of the same.

For all poll and personal property taxes

unpaid 19.....
a Summons will be issued. If not paid within Ten days after such Summons with 20 cents for said Summons, the Collector will at once proceed to collect Poll and Personal Taxes according to law, causing additional costs.

Real Estate upon which taxes remain unpaid will be advertised in December, 1941, and sold in February, 1942.

Or, the Method of Enforcing a Tax Lien on Real Estate, provided for by Public Laws 1933, Chapter 244, as amended, which creates a Mortgage on the property having priority over all other encumbrances may be used.

Or, the Method of Enforcing the Tax Lien in an action of debt as provided for in Section 28 of Chapter 14 of the Revised Statutes may be used.

Allens are assessed for a poll tax just as citizens are.

Remittance may be made by Mail and a receipt returned, IF POSTAGE IS ENCLOSED.

ANTHONY S. DODGE,

Tel., Bath 922-W Collector of Taxes.

Received Payment

Aug. 25,
Anthony S. Dodge

Collector

1941

5
Pine Tree Line No. T330
Marks Printing House, Portland, Me.

PAID IN FULL

PET'S EX. NO.

DISCOUNT

3% before July 1, 1941

2% " Sept. 1, 1941

Rate of Taxation

\$57.00 per \$1000

Poll Tax \$ 300

Real Estate 145.92

Personal Property

Total Tax \$ 148.92

Interest from

Costs *Div.* 298

Total Payment \$ 145.94

that you may simply endorse your action thereon and send it to me.

Very truly yours,
Henry F. Butler
Henry F. Butler

HFB.b

Woolwich, Maine.

December , 1940.

In compliance with your request, Henry F. Butler and Estelle K. Butler have been listed as residents and voters in the Town of Woolwich, and will be eligible to vote in the 1941 Town meeting and other elections.

(sgd) F. B. Bailey

(sgd) James F. Dunton

(sgd) George E. Wright

(sgd) Edward V. Reed
Town Clerk

* * * *

120

Petitioners' Exhibit No. 3

Received in Evidence

STATE OF MAINE

COUNTY OF SAGADAHOC, ss

BE IT KNOWN, that on this twenty-third day of December in the year of our Lord one thousand nine hundred and forty-eight, before me, Lynn M. Bussey, a Notary Public for the State of Maine, residing in the City of Bath in said County, duly commissioned and sworn and by law authorized to administer oaths and affirmations, personally appeared Edward V. Reed, of Woolwich, in the County of Sagadahoc and State of Maine, Town Clerk of said Town of Woolwich, to me well known and known to be the person he represents himself to be, who being by me duly sworn did make the following affidavit by him subscribed.

My name is Edward V. Reed and I am Town Clerk for the Town of Woolwich, Maine, and have in my possession all the official records pertaining to said office; that I further wish to state that I am acquainted with Henry F. But-

ler and Estelle K. Butler and have known them for some period of years and I wish to certify that the official records of the Town Clerk show that they are registered voters in said Town of Woolwich and have been registered voters and taxpayers in the Town of Woolwich from 1941 to 1947 inclusive, and that he has paid a tax on his automobile during the years aforesaid.

(SEAL)

Edward V. Reed

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my seal of office the day and year first above written.

Lynn M. Bussey

(SEAL)

Notary Public

* * * *

121

Petitioners' Exhibit No. 4

Received in Evidence

STATE OF MAINE

COUNTY OF SAGADAHOC, ss

BE IT KNOWN, that on this twenty-third day of December, in the year of our Lord one thousand nine hundred and forty-eight, before me, Lynn M. Bussey, a Notary Public for the State of Maine, residing in the City of Bath in said County, duly commissioned and sworn and by law authorized to administer oaths and affirmances, personally appeared Walter E. Reed, of Woolwich, in the County of Sagadahoc, and State of Maine, Tax Collector and custodian of the tax records for said Town of Woolwich, to me well known, and known to be the person he represents himself to be, who being by me duly sworn did make the following affidavit by him subscribed.

That I am the Tax Collector for the Town of Woolwich, Maine, and in my capacity as such I am custodian of all records pertaining to taxes, real and personal in said town and I wish to certify that Henry F. Butler and his wife, Estelle K. Butler, have paid all of the taxes, real, personal (tangible and intangible) and poll for which they have

Town of Woolwich, Maine

DISCOUNT

3% within 10 days
2% before Sept. 1, 1942To Henry T. Butler

YOUR STATE, COUNTY AND TOWN TAX

Rate of Taxation

\$51.00 per \$1000

FOR THE YEAR 1942 IS NOW DUE

Interest at the rate of Six Per Cent per annum will be charged from

JANUARY 1st, 1943

to date of payment if tax is not paid on or

Before January 1st, 1943

Taxes are assessed as of the first day of April in each year.

Questions relating to assessment of taxes must be taken up with the Board of Assessors.

The Collector of taxes has nothing to do with the assessment of taxes. His sworn duty is to collect all taxes, and he has absolutely no authority to change an assessment or reduce or cancel a tax.

Each partner is liable for the whole tax assessed to a firm.

An error in the name of the person taxed or an omission to make or send notice of tax bill shall not invalidate a tax or proceedings for collection and enforcement of the same.

For all poll and personal property taxes unpaid

DECEMBER 31st, 1942

a summons will be issued. If not paid within Ten days after such summons with 20 cents for said summons, the Collector will at once proceed to collect Poll and Personal Taxes according to law, causing additional costs.

Real Estate upon which taxes remain unpaid will be advertised in December, 1942, and sold in February, 1943.

Or, the Method of Enforcing a Tax Lien on Real Estate, provided for by Public Laws 1932, Chapter 244, as amended, which creates a Mortgage on the property having priority over all other encumbrances may be used.

Or, the Method of Enforcing the Tax Lien in an action of debt as provided for in Section 25 of Chapter 14 of the Revised Statutes may be used.

Allotments are assessed for a poll tax just as citizens are.

Remittance may be made by Mail and a receipt returned. IF POSTAGE IS ENCLOSED.

ANTHONY S. DODGE,

Tol., Box 922-W Collector of Taxes.

Received Payment

Place Two Lines. No. 6000
Marble Printing House, Portland, Me.

Poll Tax	\$	3.00
Real Estate		150.96
Personal Property		
Total Tax	\$	153.96
Interest from		
Costs		
Total Payment	\$	153.96

1942

Collector

Anthony S. Dodge

Town of Woolwich, Maine

To Henry F. Butler

YOUR STATE, COUNTY AND TOWN TAX

FOR THE YEAR 1943 IS NOW DUE

Interest at the rate of Six Per Cent per annum will be charged from

JANUARY 1st, 1944

to date of payment if tax is not paid on or

Before January 1st, 1944

Taxes are assessed as of the first day of April in each year.

Questions relating to assessment of taxes must be taken up with the Board of Assessors.

The Collector of taxes has nothing to do with the assessment of taxes. His sworn duty is to collect all taxes, and he has absolutely no authority to change an assessment or reduce or cancel a tax.

Each partner is liable for the whole tax assessed to a firm.

An error in the name of the person taxed or an omission to make or send notice of tax bill shall not invalidate a tax or proceedings for collection and enforcement of the same.

For all poll and personal property taxes unpaid

DECEMBER 31st, 1943

a summons will be issued. If not paid within Ten days after such summons with 20 cents for said summons, the Collector will at once proceed to collect Poll and Personal Taxes according to law, causing additional costs.

Real Estate upon which taxes remain unpaid will be advertised in December, 1943, and sold in February, 1944.

Or, the Method of Enforcing a Tax Lien on Real Estate, provided for by Public Laws 1921, Chapter 244, as amended, which creates a Mortgage on the property having priority over all other encumbrances may be used.

Or, the Method of Enforcing the Tax Lien in an action of debt as provided for in Section 28 of Chapter 14 of the Revised Statutes may be used.

Aliens are assessed for a poll tax just as citizens are.

Remittance may be made by Mail and a receipt returned. IF POSTAGE IS ENCLOSED.

ANTHONY S. DODGE,

Tel., Bath 922-W Collector of Taxes.

Received Payment

Anthony S. Dodge 1943
Collector

Pine Tree Linc. No. 50039
Marble Printing House, Portland, Me.

DISCOUNT

3% before July 1, 1943

2% before Sept. 1, 1943

Rate of Taxation

\$46.00 per \$1000

Poll Tax	\$	3 00
Real Estate		136. 16
Personal Property		
Total Tax	\$	139. 16
Interest from		
Costs	<u>None</u>	2 78
Total Payment	\$	136 78

Town of Woolwich, Maine

To Henry F. Butler

YOUR STATE, COUNTY AND TOWN TAX

FOR THE YEAR 1944 IS NOW DUE

Interest at the rate of Six Per Cent per annum will be charged from

JANUARY 1st, 1945

to date of payment if tax is not paid on or

Before January 1st, 1945

Taxes are assessed as of the first day of April in each year.

Questions relating to assessment of taxes must be taken up with the Board of Assessors.

The Collector of taxes has nothing to do with the assessment of taxes. His sworn duty is to collect all taxes, and he has absolutely no authority to change an assessment or reduce or cancel a tax.

Each partner is liable for the whole tax assessed to a firm.

An error in the name of the person taxed or an omission to make or send notice of tax bill shall not invalidate a tax or proceedings for collection and enforcement of the same.

For all poll and personal property taxes unpaid **DECEMBER 31st, 1944**

a summons will be issued. If not paid within Ten days after such summons with 50 cents for said summons, the Collector will at once proceed to collect Poll and Personal Taxes according to law, causing additional costs.

Real Estate upon which taxes remain unpaid will be advertised in December, 1944, and sold in February, 1945.

Or, the Method of Enforcing a Tax Lien on Real Estate, provided for by Public Laws 1933, Chapter 344, as amended, which creates a Mortgage on the property having priority over all other encumbrances may be used.

Or, the Method of Enforcing the Tax Lien in an action of debt as provided for in Section 28 of Chapter 14 of the Revised Statutes may be used.

Allens are assessed for a poll tax just as citizens are.

Remittance may be made by Mail and a receipt returned, IF POSTAGE IS ENCLOSED.

HAROLD B. LEEMAN,

Collector of Taxes.

Tol., Beth 20

Received Payment *Receipt*

\$1603 Dec 29 1944

Printed by **Martha Printing House, Portland, Me**

DISCOUNT

3% before July 1, 1944

2% before Sept. 1, 1944

Rate of Taxation

\$56.00 per \$1000

Poll Tax	\$	300
Real Estate		165 76
Personal Property		
Total Tax	\$	168 76
Interest from		
Costs		
Total Payment	\$	

Collector



Town of Woolwich, Maine

Henry F. Futler

To

YOUR STATE, COUNTY AND TOWN TAX

FOR THE YEAR 1945 IS NOW DUE

Interest at the rate of six Per Cent. per annum will be charged from

JANUARY 1st, 1946

to date of payment if tax is not paid on or

Before January 1st, 1946

Taxes are assessed as of the first day of April in each year.

Questions relating to assessment of taxes must be taken up with the Board of Assessors.

The Collector of taxes has nothing to do with the assessment of taxes. His sworn duty is to collect all taxes, and he has absolutely no authority to change an assessment or reduce or cancel a tax.

Each partner is liable for the whole tax assessed to a firm.

An error in the name of the person taxed or an omission to make or send notice of tax bill shall not invalidate a tax or proceedings for collection and enforcement of the same.

For all poll and personal property taxes unpaid **DECEMBER 31st, 1945** a summons will be issued. If not paid within Ten days after such summons with 20 cents for said summons, the Collector will at once proceed to collect Poll and Personal Taxes according to law, causing additional costs.

Real Estate upon which taxes remain unpaid will be advertised in December, 1945, and sold in February, 1946.

Or, the Method of Enforcing a Tax Lien on Real Estate, provided for by Public Laws 1933, Chapter 344, as amended, which creates a Mortgage on the property having priority over all other encumbrances may be used.

Or, the Method of Enforcing the Tax Lien in an action of debt as provided for in Section 28 of Chapter 14 of the Revised Statutes may be used.

Allens are assessed for a poll tax just as citizens are.

Remittance may be made by Mail and a receipt returned, IF POSTAGE IS ENCLOSED.

HAROLD B. LEEMAN

Tel., Beth 20

Collector of Taxes.

Received Payment

Five Tree Line. 54106

Marks Printing House, Portland, Me.

DISCOUNT **AUG 10**

3% before **July 15, 1945**

2% before **Sept. 1, 1945**

Rate of Taxation

\$63.00 per \$1000

Poll Tax	\$	300
Real Estate		186 48
Personal Property		
Total Tax	\$	189 48
Interest from		
Costs		
Total Payment	\$	

Received Payment **Receipt No. 2354** **Jan 2, 1946**
H. B. Leeman Collector

126

Petitioner's Exhibit Nos. 9 and 10

STATE OF MAINE
OPERATOR'S LICENSE

AUG 7 1941

No. 26627

1. PRINT NAME		<i>Henry F. Butler</i>		EXPIRES DECEMBER 31
2. STREET AND NO.		<i>Montsweag Road (Woolwich)</i>		
3. CITY OR POST OFFICE		<i>Wiscasset Maine</i>		ATTACH PHOTOGRAPH HERE IF DESIRED ON ISSUED LICENSE
4. DATE OF BIRTH	5. SEX	6. RACE	7. WEIGHT	
<i>11 Mo. 13 Da. 96 Yr.</i>	<i>M</i>	<i>W</i>	<i>165 Lbs.</i>	
8. HEIGHT	9. COLOR OF HAIR		10. COLOR OF EYES	
<i>5 Ft. 11 In.</i>	<i>Brown</i>		<i>Blue</i>	
11. SIGNATURE OF APPLICANT IN FULL		<i>Henry F. Butler</i>		

The person described above is hereby licensed to operate a motor vehicle in accordance with the provisions of Chapter 29 of the Revised Statutes, as amended. License must be carried on person while operating.

STATE OF
MAINE (SEAL) 1941FREDERICK ROBI
Secretary of State

5-26-42	STATE OF MAINE REGISTRATION CARD	44707
---------	-------------------------------------	-------

*Henry F. Butler**RFD #1*

(SEAL)

Wiscasset, Maine

MAKE <i>Hudson</i>	YR. & MODEL <i>1936</i>	ENGINE NUMBER <i>14280</i>	H. P. <i>28</i>
STYLE <i>Tudor</i>	WEIGHT <i>2985</i>	SERIAL NUMBER <i>644182</i>	REG. CAPACITY
R. \$	H. CR. \$	FEE \$ <i>14.00</i>	

The above motor vehicle is registered in accordance with the Laws of this State and application on file. Keep this card with motor vehicle. Expires Dec. 31, 1942.

Valid for use until March 1, 1943.

FREDERICK ROBI
Secretary of State

been assessed, as voting residents of the town of Woolwich, Maine from the year 1941 through the year 1947 inclusive;

That I am acquainted with both Henry F. Butler and Estelle K. Butler and know that they have said voting residence in said Town of Woolwich as hereinbefore specified.

Walter E. Reed

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my seal of office the day and year first above written.

Lynn M. Bussey
Notary Public

• • • •

128

Petitioners' Exhibit No. 14

Received in Evidence

Government of the District of Columbia
Office of the Assessor

April 16, 1942

Mr. Henry F. Butler
Investment Building
Washington, D. C.

Dear Mr. Butler:

We acknowledge receipt of your letter of April 15, 1942, and inasmuch as we believe that the papers submitted establish your claim of domicile outside the District of Columbia on the last day of the taxable year 1941, your check of \$654.23 and Mrs. Estelle K. Butler's check of \$14.11 are returned to you herewith.

Yours very truly,
/s/ J. R. Merrick

J. R. Merrick

Administrator

Income Tax Division

Wiscasset, Maine April 10—1942 No. 1164

DEPOSITORS TRUST COMPANY 52-257

Pay to the

Order of Collector of Taxes, D. C. \$14.11/100

Fourteen and 11/100 Dollars

Member Federal Reserve System

Estelle K. Butler

VOID 4/17/42

Paid under Protest and Duress

Boston, Mass. 15 Apr. 1942 No. 2343

STATE STREET TRUST COMPANY 5-130

Pay to the

Order of Collector of Taxes, D. C. \$654.23

Six Hundred fifty four 23/ Dollars

Henry F. Butler

129

Petitioners' Exhibit No. 15

Received in Evidence

STATE OF MAINE

Kennebec, ss.

Sup. Jud. Court

March Term, 1943

Be it remembered that *HENRY F. BUTLER* of *Woolwich*, in the County of *SAGadahoc* having made application to practice as an attorney and counsellor in the Judicial Courts of this State, and having complied with all the requirements of law regulating such admission, the court thereupon order that he be admitted to practice law in all the courts of this State, and he is so admitted accordingly.
(SEAL)

Attest:

Nellie P. Rackliff,

Clerk.

130

Petitioners' Exhibit No. 16

Received in Evidence

THIS RETURN IS FILED UNDER PROTEST
UNITED STATES
INDIVIDUAL INCOME TAX RETURN
For Calendar Year 1941

Henry F. Butler

Legal Residence: Woolwich, Maine

*For purposes of this return: Investment Building,
Washington, D. C.*

* * * *

140

Petitioners' Exhibit 17

Receieved in Evidence

UNITED STATES
INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1942

Henry F. Butler

Legal Residence: Woolwich, Maine

For this return: 1011 Investment Bldg.

Washington, D. C.

(Occupation) *Lawyer* *Self-employed*

* * * *

165

Petitioners' Exhibit No. 18

Received in Evidence

UNITED STATES
INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1942

Estelle K. Butler

Legal Res.: Woolwich, Maine

For this return: 1011 Investment Bldg., Washington, D. C.

Housewife (Social Security number, if any) *579-22-8403*

Not employed this year

* * *

169 *Petitioners' Exhibit No. 19*

Received in Evidence

UNITED STATES
INDIVIDUAL INCOME AND VICTORY TAX RETURN
FOR CALENDAR YEAR 1943

Henry F. Butler & Estelle K. Butler
Investment Building, Washington, D. C.
Claim domicile in Woolwich, Maine

* * *

185 *Petitioners' Exhibit No. 20*

Received in Evidence

U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1944

Henry F. & Estelle K. Butler
Legal residence: Woolwich, Maine
For purposes of this return: 1011 Investment Bldg.,
Washington 5, D. C.

* * *

191 *Petitioners' Exhibit No. 21*

Received in Evidence

U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1945

Henry F. & Estelle K. Butler
Legal residence: Woolwich, Maine
For purposes of this return: 1011 Investment Bldg.,
Washington 5, D. C.
Occupation Attorney

* * *

*Petitioners' Exhibit No. 27*212 *Filed and Paid Under Protest, Duress & Compulsion*DISTRICT OF COLUMBIA
INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1941*Henry F. Butler Legal Residence and domicile:
Woolwich, Maine. Local Address: Investment Building,
Washington, D. C.*

* * * *

220 *Return Filed and Payment Made Under Protest,
Duress and Compulsion*DISTRICT OF COLUMBIA
INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1941*Estelle K. Butler Legal Residence and domicile:
Woolwich, Maine. Local address: Investment Building,
Washington, D. C.*

* * * *

223 *Respondent's Exhibit A**Received in Evidence*Information to be submitted to the Assessor, D. C. if
domicile outside the District of Columbia is claimed.222a 1. Name *Henry F. Butler*

(Please type or print)

2. District address *Investment Building*3. In what jurisdiction do you consider yourself domiciled? (1941) *Maine*4. Place of birth *Yonkers, New York* Date of birth
*13 Nov. 1896*5. Single Married *x*(a) If married, state whether living with husband
or wife. Yes *x* No 6. Did you maintain a place of abode in the District during the taxable year? Yes *x* No

- (a) Address of such place of abode *2018 Hillyer Place*
- (b) House *x* Apartment Room
- (c) Do you own such place of abode? Yes
No *x*
If so, state its approximate value \$
If not, is the abode leased to you? Yes *x* No.
When does lease expire? *Sept. 1942*
What monthly rental do you pay? *\$90.00*
- (d) How long have you resided in the District?
Since 1934 (see supplement)
- (e) Do you or your family own all or a substantial part of the furniture in such place of abode?
Yes *x* No.
- (f) Are you listed as a District of Columbia resident in the telephone directory? Yes *x* (*See Supplement*)
- (g) Does any of your children attend District of Columbia public or private schools? Yes
No *x*
If so, how long has each so attended?
7. Did you maintain a place of abode in any jurisdiction other than the District during the taxable year? Yes *x*
No.
- (a) Address of such place of abode *Woolwich, Maine.*
- (b) House *x* Apartment Room
- (c) Do you own such place of abode? Yes *x* No.
If so, state its approximate value *\$10,000*
- (d) How long have you maintained such place of abode? *Since 1926 (See supplement)*
- (e) How much time do you and your family spend each year at such abode? *about two months*
- (f) Do you or your family own all or a substantial part of the furniture in such place of abode?
Yes *x* No.
8. Name and address of present employer.
not employed (see supplement)
(If employed by the District or U. S. Government or any agency thereof, state department or branch)

- (a) Is your position permanent? temporary special? war-time?
 - (b) Does your position require fixed residence in the District or vicinity? Yes No
 - (c) State amount of your annual earned income before coming to the District of Columbia \$ Where and how was such income earned? (*See supplement*)
 - (d) Annual earned income at present \$ (*See supplement*)
 - (e) If you are in the military service, state the date and place such service commenced, and the place where you were domiciled at the time such service commenced *not in military service*
 - (f) If you are under Civil Service, state the approximate date and place such service commenced *not in Civil service*
9. Do you own a car? Yes *x* No *2 cars*
If so, where was it registered during the taxable year?
1 in D. C. — 1 in Maine
10. Do you vote regularly in National *x* State *x* City *x* elections?
(a) When did you last vote? *March 1942*
(b) Where? *Woolwich, Maine*
(c) In person? *x* By absentee ballot?
11. If a return of income was filed with the U. S. Bureau of Internal Revenue for the preceding year, with which Collector's Office was it filed? *Baltimore (see supplement)*
12. Do you regularly report your income or intangible personal property and pay taxes thereon to any state or territory? Yes *x* No.
(a) When and with what state was the last such return filed? (Describe the return) *last income tax return was to Massachusetts for 1940; Maine "Dooms" me for intangibles.*
(b) Amount of such income tax paid for that year.
1940 \$342.61 (See supplement)

(c) Amount of such intangible property tax paid for that year. \$

13. List the churches with which you are affiliated, and the clubs, lodges, professional, religious or fraternal organizations of which you are a member, located in the District of Columbia and the names and addresses of those located outside the District.

See supplement.

14. To indicate whether your investments identify you more closely with the District than elsewhere, describe briefly and state approximate values of any investments in, or secured by, property located in or near the District, in securities of local corporations or other local business organizations, in local building and loan associations and financial institutions, deposits in local banks, etc. Submit similar information as to investments, etc., identified with business or property outside the District.

See supplement.

15. Is it your intention to return to that place which you claim as your domicile? Yes $\times$ No If so, state when and any circumstances which indicate that such intention will be realized.

When I cease to represent various out-of-town law firms in connection with matters before the Federal Government.

16. State any additional facts which in your opinion support your claim that you were not domiciled in the District of Columbia on the last day of the taxable year. (*See supplement*) *Domicile is a matter of intent, supported by reasonable facts—it is my intent to maintain my domicile in Maine, and I have always consistently so maintained.*

I hereby certify that all of the information appearing on this return, and on any supplemental statement attached hereto, is true to the best of my knowledge and belief.

Henry F. Butler

(Signature of taxpayer)

15 April, 1942

* * *

If claim for refund is made, the taxpayer must execute the claim under oath.

CLAIM FOR REFUND

Under the provisions of Section 34 of the District of Columbia Income Tax Act, I hereby file this claim for refund of \$654.23 for income tax paid by me to the District of Columbia for the taxable year or years ended 1941, such claim for refund being based on my contention that I was not domiciled in the District of Columbia on the last day of such taxable year for which such tax was paid. I hereby certify that all of the information appearing on this return, and on any supplemental statement attached hereto, is true to the best of my knowledge and belief.

Henry F. Butler

Signature of taxpayer

Subscribed and sworn to before me this 15 day of April, 1942

Thomas B. Heffelfinger (SEAL)
Notary Public

*Supplemental Statement of Henry F. Butler to Be
Appended to and Made a Part of Affidavit of
Information Submitted to the Assessor, D. C.,
for the Calendar Year 1941*

The statements made in this supplemental statement and in the printed information return to which this is appended pertain to the year 1941 (unless otherwise stated) and not to earlier years in regard to which separate statements have been made.

I claim that at all times through the present time, and therefore including the year 1941, I was not domiciled in, nor a "legal resident" of, the District of Columbia. Dur-

ing the year 1941 I was (and I presently am) a registered voter, legal resident, and domiciliary of the State of Maine, and I have so stated on all tax returns, legal documents, etc. executed and filed by me in the District of Columbia or with the Federal Government or in any other respect.

Prior to January 1, 1941 I was a registered voter in the Commonwealth of Massachusetts; however, I effected a change of legal residence to Woolwich, Maine, and as appears in the official records of the Town of Woolwich, I became a registered voter there on January 1, 1941.

The history of my domicile is as follows: I (and my wife, Estelle K. Butler) established legal residence and domicile in Woolwich, Maine in 1921, living there year round and assuming all of the burdens and exercising all of the benefits of a resident and domiciliary of Woolwich, Maine. In 1926 I and my wife acquired by purchase as joint tenants our present home in Woolwich and have owned it and lived in it ever since and own all of the furnishings therein. In 1930 I (and my wife) moved to Cambridge, Massachusetts in order that I might practice law in Boston, Massachusetts. In Cambridge we lived in a rented apartment or house (with our own furniture) and

as we were spending practically all of our time in
 224 Massachusetts, we transferred our legal voting residence to Massachusetts and thereafter exercised all of the privileges and assumed all of the burdens of such residence of Massachusetts, including the filing of Massachusetts Income Tax Returns and the payment of income taxes. During the years I practiced law in Boston (1930-1934) I maintained my home in Maine and during one or more of those years registered my car both in the Commonwealth of Massachusetts and in the State of Maine in order to comply with the laws of both jurisdictions.

In Massachusetts I was associated with the Law Firm of Messrs. Warner, Stackpole and Bradlee, and in the early spring of 1934 I obtained a short leave of absence to come to Washington to attend to some legal matters;

and again in the fall of 1934 I obtained leave of absence to come to Washington to attend to legal matters. I have never resigned from that law firm (which today is Messrs. Warner, Stackpole, Stetson and Bradlee) and I represent that office in connection with its Washington business. Also, I represent other law offices in various cities other than the District of Columbia. The majority of my time in Washington is spent on cases in which I am associated with, and representing, out-of-town counsel; a certain amount of time is spent on cases in which I represent out-of-town clients directly; a comparatively small amount of time is spent on cases which originated in the District of Columbia and which may properly be designated as local law cases.

In the fall of 1934 when I anticipated being in Washington for an indefinite (although not permanent) period of time, I arranged to terminate the lease on my rented house in Cambridge and shipped my furniture to Washington, where it remained in storage until I managed to rent a house. From the time of my arrival in Washington in the fall of 1934 through the year 1941 I have lived in three different rented houses, with a period in 1937 when my furniture was in storage and I was living in a hotel while
225 looking for another rental. Practically all of the furniture which I had in Washington during those years had previously been in my house in Maine, and I expect to take it back to my house in Maine when I return there. I have more furniture in Maine than in the District of Columbia.

Certain inquiries on the printed questionnaire require enlargement, and the following data refer particularly to the designated question on the printed form:

6(d) My answer to this does not constitute an admission of "legal residence" in the District of Columbia, which I specifically deny.

6(f) My answer to this does not constitute an admission of legal residence in the District of Columbia. Any

person having a telephone at his place of abode, whether temporary or permanent, would be listed as a "resident". I am also listed as a resident in the Bath, Maine telephone directory covering the telephone at my home in Woolwich, which is Bath 276, Ring 21.

8(a), (b), (c) and (d) I am not employed and during the years 1939 and 1940 was not employed, but I am and was in the private practice of law. Accordingly, it is impossible to answer items (a), (b), (c) and (d) under Paragraph 8 without further explanation. In regard to (a), I do not hold a "position" and, therefore, cannot say that it is permanent or temporary. In regard to item (b), the practice of law does not necessitate my being in the District of Columbia, but obviously my present line of practice does necessitate my being in the District or vicinity. How long this will continue, I do not know. In regard to item (c), my annual earned income before coming to the District of Columbia ranged between \$1,800. and \$3,600. a year, earned in Maine and in Massachusetts, and varying according to varying circumstances, including the available practice, depression conditions, etc. In regard to item (d), my earned income in 1941, exclusive of fiduciary's commissions, was 24,303.68, minus deductions for contributions, interest and taxes of \$1,560.44, net \$22,743.24; in addition I received substantial payments on account of fiduciary's commissions in a certain D. C. estate and New York trust, which obviously do not constitute recurring payments of income, and which amounted to \$21,301.52 from the D. C. estate and \$10,406.06 from the New York trust.

11 Federal Income Tax Returns were regularly filed by me with the collector's office nearest my office on March 15 of each year; and that happened to be the Washington office of the Baltimore Collector. My Federal tax return for 1941 gave my legal residence and domicile as Woolwich, Maine; Federal returns for previous years gave my legal residence as Cambridge, Massachusetts.

13 During the year 1941 I was a member of:

Bar Association of the City of Cambridge, Cambridge, Massachusetts.

Bar Association of the City of Boston, Boston, Massachusetts.

226 American Bar Association, as from the Commonwealth of Massachusetts;

Bar Association of the City of New York, 42 West 44th Street, New York City, joined 1940;

Cap and Gown Club, Prospect Street, Princeton, New Jersey;

National Council on Naturalization and Citizenship, 29 Washington Square, New York City;

Member of First Presbyterian Church, Yonkers, New York;

Maine State Society, Washington, D. C.;

University Club, Washington, D. C.;

Metropolitan Club, Washington, D. C. (joined 1940);

Bar Association of the District of Columbia.

14. During the year 1941 I owned no investments secured by property in or near the District of Columbia nor securities of local corporations, etc. *except* a deposit with Interstate Building Association jointly with my wife, Estelle K. Butler in amount \$2,000. My bank accounts during the year 1941 were as follows:

Checking account with State Street Trust Company, Boston, Massachusetts, since 1930;

Checking account with Depositors Trust Company, Wiscasset, Maine (formerly Augusta Trust Company) since 1924;

Savings account with Depositors Trust Company, Wiscasset, Maine (formerly Augusta Trust Company) since 1924.

Savings account with First National Bank of Bath, Maine, since about 1924;

Savings account with Yonkers Savings Bank, Yonkers, New York since 1897;

Checking account with National Savings and Trust Company, Washington, D. C. since 1934;

Checking account (office) with Union Trust Company, Washington, D. C. since 1934;

Checking account with Riggs National Bank; Washington, D. C. opened 1940.

In 1941 I owned real estate in the Towns of Woolwich and Westport, Maine.

16. Reference is made to personal property tax returns filed by me in the District of Columbia for all years from and including 1935 on which I have consistently claimed legal residence outside of the District and accordingly I made no return of, and paid no tax on, intangibles.

227 In all documents, etc., I have consistently claimed legal residence and domicile in Maine since January 1, 1941; for the years 1930 - 1940 inclusive I claimed "legal residence" in Massachusetts; prior to that I claimed "legal residence" in Maine. I have consistently asserted that I am not a legal resident of, or domiciliary of, the District of Columbia.

In regard to my expectation and intention, I have continued to maintain my professional connections in Massachusetts and my permanent home in Maine, and I expect and intend eventually to return to, and permanently live in, Maine. I can definitely state that from my legal understanding of the connotation of "legal residence" and "domicile" I am not "legally resident" nor "domiciled" in the District of Columbia, but I am a "legal resident" and "domiciliary" of the State of Maine.

That my home in Woolwich, Maine is my permanent home is further evidenced by the fact that I expend a considerable amount of money on the premises there each year keeping them in up-to-date repair for year round occupancy. Specifically, during the calendar year 1941 I rebuilt the foundation to my house, resingled the roof, installed a complete automatic hot air heating system and

insulated the roof and walls, as well as doing a good deal of interior refinishing, at a total cost of over \$3,500. During 1941 I occupied my house at various times in the months of May, July, August and November. I keep an automobile in Maine (registered in Maine) for my use when there.

* * * *

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Respondent's Exhibit B

Government of the District of Columbia
Office of the Assessor

Income Tax Division
Washington 4, D. C.

August 11, 1944

Mr. Henry F. Butler,
Investment Building,
Washington 5, D. C.

Dear Sir:

In compliance with the request contained in your letter of August 10th, 1944, you are hereby granted a further extension until October 14th, 1944 within which to file your 1943 D. C. income tax returns. Returns for the year ending December 31, 1942 should also be filed at the same time.

If you do not file an appeal from the decision of the Board of Tax Appeals for the District of Columbia within 30 days after August 3, 1944, it is the intention of this office to demand payment of income taxes for the years 1941, 1942 and 1943. If an appeal is taken, the taxes will be assessed by this office, but no action will be taken towards enforcement of the collection of same pending the appeal, unless before a final decision by the Court of Appeals, the collection of the tax may be jeopardized by the running of the statute of limitations. In the latter

event, we will not attempt to enforce payment of the taxes if you will agree to waive the statute of limitations.

Very truly yours,

A. F. Brooke,

A. F. Brooke,

Assistant Administrator,

Income Tax Division.

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Respondent's Exhibit E

Law Offices

Charles Henry Butler (1882-1940)

Henry F. Butler

Gibbs L. Baker

Telephone District 2409

Cable Address "Reltub"

Investment Building

Washington, D. C.

P. O. Zone 5

July 21, 1943

Assessor of Taxes, D. C.

Washington, D. C.

Attention: Mr. A. F. Brooke,

Assistant Administrator, Income Tax Division

Re: Your communication to Henry F. Butler &

Estelle K. Butler, dated May 7, 1943,

No. B-14716 & 1B-19457

Dear Sir:

I hereby request reconsideration of my claims for refund for income tax paid to the District of Columbia for the tax years 1939 and 1940.

Pursuant to conference with Mr. Brooke I am handing you herewith supplemental information pertaining to my continued domicile in Woolwich, Maine, from 1921 down through the present time, embodying certain information not heretofore presented to you and which I trust will lead you to your agreement with my contention that I have not at any time been domiciled in the District of Columbia.

If you agree with my contention and allow my claims for refund, will you be good enough to so advise me in the near future in order that it may not be necessary for me to take an appeal to the D. C. Board of Tax Appeals.

Also please note that my claim of domicile in Woolwich, Maine, and of no domicile in the District of Columbia pertains equally to all years since 1940.

Very truly yours,
/s/ Henry F. Butler
Henry F. Butler

* * * *

231 *Statement of Henry F. Butler*
Supplemental to Information Previously Submitted
to the Assessor of Taxes, D. C.
Re Calendar years 1939 & 1940.

Reference is made to statements heretofore submitted by Henry F. Butler in connection with his claim of domicile outside of the District of Columbia for the years 1939 & 1940, and for the year 1941, and to conferences with officials of the District of Columbia Income Tax Division. This statement is made in response to inquiries as to my continued activities in Woolwich, Maine, from 1921 through the present time.

In 1921 shortly after graduating from Princeton University I undertook the management of Montsweag Farm, situated in Woolwich, and with properties in the adjoining towns of Wiscasset and Westport, Maine, and with my wife, Estelle K. Butler, lived year-round in Woolwich, Maine.

Montsweag Farm and the other Maine properties comprised some 2000 acres and included an apple orchard of 2500 trees, a dairy herd, a poultry plant with 10,000-egg incubator, and equipment for approximately 10,000 birds (broilers and layers), a tea-room which ran during the summer months, as well as general farming operations and a considerable amount of timber and wood lots. These

properties had been acquired from time to time by my father, commencing in about 1910; my wife and I lived in one of the houses which had been completely renovated for our use, for a number of years, and in 1926 I purchased and during the next few years renovated the house in Woolwich into which we thereupon moved and which has been our home and domicile ever since.

In 1932 I acquired by deed from my father all of the Maine properties above described which I did not already own.

In the fall of 1927 I entered Harvard Law School 232 and with my wife lived in Cambridge, Massachusetts, during the academic sessions. I continued to manage and operate Montsweag Farm, spending all available time between semesters and over weekends in Maine, and living in my Woolwich home which was available for occupancy at all times.

Upon graduation from Harvard Law School in 1930, I arranged to practice law in Boston so as to be within easy motoring distance of Woolwich and thus be able to continue to manage Montsweag Farm and other Maine properties. I continued to spend much time, summer and winter, at Woolwich.

I never owned real estate in Massachusetts, but lived in rented apartments, and later in a rented one-half of a small house at 30 Shephard Street, Cambridge. The furnishings of our apartment or house were brought from Maine, where we had (and still have) considerably more furniture than we are using in our Maine dwelling.

In view of the fact that I was practicing law in Boston and therefore dealing with many Massachusetts governmental officials, it seemed desirable to transfer my voting rights from Woolwich, Maine, (where my wife and I had consistently voted since 1921), to Cambridge, Massachusetts. Accordingly, in 1931 my wife and I registered as voters in Cambridge and thereafter we consistently filed Massachusetts income tax returns and paid the taxes due

thereon until we transferred our voting registration back to Woolwich, Maine, on January 1, 1941.

In the fall of 1934, at the request of my father who was getting along in years, I came to Washington to see whether it would be a favorable location for me to practice law; I retained my association with my Boston office and continued to claim Cambridge as my voting residence and (as above stated) to file Massachusetts income tax returns and pay taxes thereon.

233 In the fall of 1934 I was living in a rented half house at 30 Shephard Street, Cambridge, Massachusetts; before going to Washington I moved a considerable amount of my personal property back to Woolwich, Maine; I shipped other furniture by truck to Washington where it was placed in storage (and remained in storage for several months as I had no living quarters in Washington). At the same time my wife proceeded immediately to Woolwich, Maine, and I proceeded to Woolwich, Maine, after first attending the Annual Bar Association Meeting at Milwaukee. Thus the immediate physical move from Cambridge was back to our home in Woolwich, Maine. Thereafter we proceeded to Washington and lived at the Cairo Hotel for a number of months until we were able to rent a small house at 3010 P Street, N. W.

I continued to manage Montsweag Farm and the other Maine properties, making frequent trips from Washington to Maine, spending much time there, and always occupying my home which was at all times available for occupancy.

In view of the depression, farming in Maine as well as elsewhere became unprofitable and at various times I disposed of the active farming properties, such as the poultry and dairy plants, and finally in 1939 I sold the orchard. I still retained much property that did not require paid personnel to farm or manage and I continued to be in Woolwich as much as possible to supervise this property, always staying at my own home, which has always been available for my occupancy at all times.

- 2 -

In 1939 I requested that I be again registered as a voter in Woolwich, but I was thereupon informed that my request had been made too late in the season to have my registration effected that year; accordingly, I deferred action. As I did not wish to lose my opportunity to vote in the Presidential elections in 1940, I continued my voting residence in Cambridge for that year and cast my ballot that fall in Cambridge. Also in 1940 I made formal
 234 application to the Town of Woolwich to again register me as a voter, commencing January 1, 1941, and this was granted as I had complied with all residence requirements.

When I made my request to be registered in Woolwich in 1939, I discovered that the town apparently had continued to record me as a domiciliary during all the years I had been in Cambridge and had charged me poll taxes all those years. As Woolwich is a typical small New England town where everyone knows what everyone else is doing, this is strong evidence of the fact that I spent so much time in Woolwich that the town officers considered I always had been a resident and domiciliary of that town.

Practically every year I have had a considerable amount of upkeep work done in my home in Woolwich so as to keep it in constant repair; for example, in 1940 I had the barn and outbuildings resingled; in 1941 I had the foundation under the house rebuilt, and an oil burner furnace installed; and in 1941-42 I had the entire inside of the house renovated, much of the work being done during the winter season for which purpose I kept the house open.

In March 1942 and in March 1943 I attended Town Meeting in Woolwich, taking an active part in the discussions and exercising all of my rights as a domiciliary and voting resident of the Town of Woolwich. I have always been active in civic affairs, assisting in the formation of a Woolwich Volunteer Fire Department and other such activities.

In 1943 I was admitted to the Bar of the State of Maine on motion, the Court having found that I was a resident and domiciliary of the State of Maine, albeit that presently I am practicing law in the District of Columbia.

On all returns filed in the District I have stated that I claimed legal residence either in Cambridge or in
235 Woolwich, as the case might be; in connection with the District of Columbia income tax returns I stated (as I then believed to be the case) that I had at all times been a legal resident *and domiciliary* either of Cambridge, or of Woolwich, Maine. We are all aware of the fact that the question of domicile has been one of numerous interpretations, and I now submit that on the facts as they existed through the years I probably never relinquished my domicile in Woolwich, Maine, although for the years 1931-40 inclusive, I was a registered voter and taxpayer in Massachusetts. In any event, as I have stated, I never established a domicile in the District of Columbia.

It should be noted that my change of legal residence and voting registration from Cambridge to Maine was effected by requests made while I was physically in the State of Maine and upon compliance with the State of Maine requirements for residence in that State — and not by mail from the District of Columbia or elsewhere; so that it was a proper and bona fide transfer of voting rights.

It should also be noted that the officials of the Town of Woolwich apparently considered that I had never relinquished my domicile in Woolwich; and I believe they were probably correct in their interpretation of that question.

My home in Maine has at all times been in my exclusive possession and available for use and occupancy by me; exclusive occupancy has never been given to another; my wife and I have always occupied that home when we were in Maine; we keep an automobile in Maine so as to have it available for immediate use when we go there by train. The house is equipped with electricity for lighting, cooking, refrigeration, and heating water, and (as above

stated) with an oil burner (electrically operated) for central heating so that it can be made available for comfortable occupancy with the mere throwing in place of a
236 few electric switches. It is rock-wool insulated for warmth in winter, and obviously is comfortable for year-round occupancy.

During all of the years from 1921 through the present time I have paid real estate and local taxes in Maine; for example, on my current real estate taxes for the Towns of Woolwich and Westport, Maine, for 1943 I am assessed for approximately seven hundred acres of farm and wood land, and my dwelling and other buildings thereon; I am also liable for such personal property tax as the local authorities may determine and assess; all Maine taxes are currently paid and I have no unpaid taxes in arrears.

Domicile involves not only the surrounding facts but the intentions of the parties, and I again reiterate it has consistently been the intention of my wife and me to maintain our permanent home and domicile in Maine and, conversely, not to establish a permanent home and domicile in Washington. The major part of the furnishings in our Washington residence were shipped from surplus furnishings in Maine; personal property which we are not constantly using is returned by us to Maine and either used or stored in our home there. We keep clothing and other personal effects in Maine, so we can go there with the minimum of baggage.

It must be remembered that I was brought up in a lawyer's family where, from childhood, the question of maintaining a domicile and voting residence elsewhere than in the District of Columbia was a frequent topic of conversation and elucidation to visiting attorneys who were always interested in how persons spending much time in Washington, retained their voting privileges in the states of their origin. Therefore it is entirely natural that I had definite *intentions* in regard to NOT establishing a domicile in Washington. The question of domicile as between Wool-

wich, Maine, and Cambridge, Massachusetts, was far less important, which accounts in part for my previous (possibly erroneous) statement re domicile in Massachusetts.

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Summary

There can be no doubt but that during the years 1921-27 my wife and I were domiciled at Woolwich, Maine.

From 1927-30 while I was studying law at Harvard, it is clear that there was no change of domicile or legal residence.

In 1931 there was a change of voting registration; but there was no further physical change, and it now appears clear that there was no change of domicile.

In 1934 there was a physical change of personal property from Cambridge, part back to Woolwich, whence it had come, and part to Washington to be placed in storage. My wife and I first returned from Cambridge to Woolwich (occupying our home there) and then proceeded to Washington where we stayed at a hotel. We made no change in voting registration at that time but continued to be registered voters in Cambridge. The sojourn in Washington was definitely for a trial period; I retained my association with my Boston law office with the understanding that I might return at any time. Clearly there was no change of domicile from Cambridge or from Woolwich to Washington at that time.

On January 1, 1941, our voting registration was changed from Cambridge, Massachusetts, to Woolwich, Maine. The requirements regarding actual residence in Woolwich prior to such registration having been fulfilled. Thus, at that time clearly there was no change of domicile from Woolwich, Maine, or Cambridge, Massachusetts, to Washington.

The intention of the parties was always to retain and maintain legal voting residence and domicile in Woolwich, Maine, or Cambridge, Massachusetts, and conversely, to avoid establishing legal residence or domicile in the Dis-

trict of Columbia. We have always assumed all state obligations regarding taxes, automobile registration and
 238 the duty to vote; and also all tax obligations properly falling on persons in the District of Columbia who are legal residents and domiciliaries of other states. We intend to return to our home in Woolwich, Maine, whenever possible and be there as much as possible.

Conclusion

On the facts as they have existed over the years it appears that our domicile has remained continuously at Woolwich, Maine, and that from and after 1921 there has been no change of domicile. If there was no change of domicile to Massachusetts, certainly there has been no change of domicile to the District of Columbia. If it could be contended that there was a change of domicile to Massachusetts, then that domicile was either returned to Maine in 1934 when we actually returned from Cambridge, Massachusetts, to Woolwich, Maine, or during 1940 when we effected change of voting registration from Cambridge to Woolwich as of January 1, 1941, and were personally, physically in Woolwich, Maine, for that purpose. There has never been a change of domicile to the District of Columbia.

From the foregoing additional statements not heretofore fully set forth, I submit that there can be no question but that in accordance with the decisions of the Supreme Court of the United States, my wife and I have never been domiciled in the District of Columbia and have maintained our domicile in Woolwich, Maine, continuously from 1921 to the present time.

Respectfully submitted,

/s/ Henry F. Butler

Henry F. Butler

CITY OF WASHINGTON

DISTRICT OF COLUMBIA SS.

Subscribed and sworn to before me July 21, 1943.

Olive E. FitzGerald

Notary Public, D. C.

My commission expires Oct. 14, 1947

* * * *

Respondent's Exhibit Q

258 Received June 28, 1948 Income Tax Division

DISTRICT OF COLUMBIA

Claim for Refund

HENRY F. BUTLER and ESTELLE K. BUTLER, claiming that neither of them are domiciled in the District of Columbia, and were not domiciled in the District of Columbia at any time and particularly not on the 31st day of December in the years 1941, 1942, 1943, 1944 or 1945, make this claim for refund of District of Columbia Income Taxes erroneously and illegally assessed against and collected from them and each of them, and paid under protest, duress and compulsion on July 1, 1946, and in support of their claim submit the following information. For the reason that the printed information form is not adequate to cover the facts in this case, the taxpayers have not attempted to use that form, but for convenience of the Taxing Authorities of the District of Columbia have substantially followed the order of questions in that printed form. Statements in this Claim are as of August 1, 1946.

1. The taxpayers filed under protest separate returns covering the calendar years 1941 and 1942, and joint returns covering subsequent years. This claim for refund is intended to cover both separate and joint assessments and payments. The taxpayers have lived together as husband and wife during the years involved, and most information herein contained is pertinent to both taxpayers unless specifically designated as pertaining to one or the other.

2. For the purposes of this matter the taxpayers' Washington address is 1011 Investment Building, Washington 5, D. C.

3. As consistently claimed by the taxpayers during the

years involved, and as appears on the returns as filed for those years, the taxpayers claim domicile in the State of Maine.

The United States Court of Appeals for the District of Columbia in *Butler v. District of Columbia*, 80 U. S. App. D. C. 310; 153 F. (2) 617, found the taxpayers were not domiciled in the District of Columbia on the 31st day of December in the years 1939 and 1940.

259 The Administrator, Income Tax Division, of the District of Columbia determined that the taxpayers were not domiciled in the District of Columbia on the 31st day of December, 1941, and that determination has never been revoked and no assessment has ever been made for the tax year 1941.

4. Henry F. Butler was born at Yonkers, New York on November 13, 1896. Estelle K. Butler was born at Lexington, Kentucky on October 28, 1895.

5. The taxpayers are married and living together.

6. During the years involved the taxpayers maintained a place of abode in the District of Columbia as well as their home at Woolwich, Maine. During the calendar year 1941 and into January, 1942 they rented a small house at 2018 Hillyer Place, N.W.; in January, 1942 they purchased a house at 1671 31st Street, N. W., which they have owned down to the present time.

At 2018 Hillyer Place the rent was \$90. per month; the assessed value of 1671 31st Street is \$22,090. The lease on Hillyer Place house expired in 1942 and the owners had given notice they would not renew the lease.

The taxpayers owned all of the furniture which they had at Hillyer Place and now have at 1671 31st Street, most of which came from their home in Maine, where they still own considerably more furniture than they have in Washington.

Henry F. Butler subscribed to "Residence" and "Business" telephone service in the District of Columbia and to "Residence" telephone service at Bath, Maine (the central office for Woolwich, Maine).

Taxpayers have no children.

7. During the years involved, and continuously since 1921 the taxpayers have maintained their home in Woolwich, Maine. They have owned the home where they now live in Woolwich since 1927. Including improvements of a permanent and structural nature which
260 were added to the home in Maine in recent years, the taxpayers' investment there amounts to not less than \$10,000.

They have lived in their home in Maine during each year since 1921, varying in time largely according to world conditions and governmental travel restrictions. They own all of the furniture in their home in Maine, plus a considerable amount of excess furniture which they have stored there, and from which came much of the furniture in their house in Washington.

The home in Maine is a year around dwelling house, fully equipped with modern conveniences, insulated, with four bedrooms plus servant's bedroom, two baths plus servant's bath, living room, library, dining room, kitchen, pantry; also adjacent large studio and adjacent large barn (available for garage and other purposes).

8. Henry F. Butler is an attorney with his own law offices both at his home in Woolwich, Maine and at 1011 Investment Building in the District of Columbia. His practice does not require fixed residence in the District or vicinity, but on the contrary, the very nature of his practice requires him to be away from the District on numerous trips and is greatly enhanced by his maintenance of permanent home and domicile and voting connections outside the District. The income of the taxpayers for the years 1939 and 1940 during which years the U. S. Court of Appeals has determined they were not domiciled in the District of Columbia, as well as for all subsequent years, has been reported under protest to the District. As indicated on the several tax returns, the income derives principally from fees for legal services rendered persons

and firms outside of the District of Columbia. Some of the income derives from fees and commissions earned in connection with the administration of estates of persons who died domiciled in the District of Columbia, all as was set forth in the record before the Court of Appeals.

261 9. During the taxable years 1941, 1942, 1943, 1944 and 1945 the taxpayers owned two automobiles, one of which was registered in the State of Maine and the other of which was registered in the District of Columbia, complying in each instance with the laws of those two jurisdictions. During those years with gasoline shortages, the taxpayers did not travel between those two locations by automobile, and consequently there was no need to register either car in the other jurisdiction.

At the date of this instrument, taxpayers own one automobile which is registered both in Maine and in the District of Columbia.

10. Taxpayers vote regularly in Maine in national and state elections, and have attended Town Meetings at Woolwich, Maine with as much regularity as travel conditions have permitted. As of the date of this instrument, August 1, 1946, they last voted in 1945 in Woolwich Maine in person. On some occasions they have voted by absent ballot. They have voted consistently in Woolwich, Maine at every national and state election during the years involved.

11. The taxpayers have filed Federal Income Tax Returns in each of the years involved with the Collector's Office at Baltimore, Maryland, and in each instance have given as their domicile, WOOLWICH, MAINE, stating that for the purposes of the return the Bureau should communicate with the taxpayers at 1011 Investment Building, Washington 5, D. C.

12. Taxpayers have made and do make report or return of their property in Maine as required in that jurisdiction. No state return is required; there is no income tax in the State of Maine. The taxes assessed the taxpayers in the State of Maine are by the towns of Woolwich and of West-

port. Male domiciliaries in Maine are assessed poll taxes by the town in which they are domiciled, and the taxpayer, Henry F. Butler, during all the years involved, since and including 1941 has been so assessed as a domiciliary in Woolwich. The taxpayers have paid all taxes assessed against them in Maine during all the years involved.

13. Henry F. Butler is a member of the First Presbyterian Church, Yonkers, New York; neither taxpayer is a member or regular attendant of any church in the District of Columbia. In Maine they customarily attend St. Phillips Episcopal Church at Wiscasset; in Washington they often attend St. Johns Episcopal Church, Sixteenth Street; but they also attend other churches if they desire to hear particular preachers or attend particular services.

Henry F. Butler is a member of the following organizations:

- Princeton Club of New York
- National Republican Club of New York
- Cap & Gown Club, Princeton, New Jersey
- Bar Association of the City of New York
- Bar Association of the City of Boston
- American Bar Association
- American Law Institute
- National Council on Naturalization and Citizenship with headquarters at New York, New York
- University Club, D. C.
- Metropolitan Club, D. C.
- Bar Association of the District of Columbia
- Georgetown Real Estate Owners' Association (with the statement on record that his home is in Woolwich, Maine)
- South Woolwich Volunteer Fire Society, Woolwich, Maine

Both taxpayers are members of the Maine State Society in the District of Columbia

14. Taxpayers own approximately 750 acres of land in the State of Maine (including the parcel which consti-

tutes their home and domicile which they own as joint tenants and which comprises approximately 150 acres); they have owned more or less property in Maine continuously since 1921. The taxpayers have the following bank accounts:

Checking account with State Street Trust Company, Boston, Massachusetts, since 1930

Checking account with Depositors Trust Company, Wiscasset, Maine (formerly Augusta Trust Company), since 1924

Savings account with Depositors Trust Company, Wiscasset, Maine, (formerly Augusta Trust Company) since 1924

Savings account with First National Bank of Bath, Maine since 1924

Savings account with Yonkers Savings Bank, Yonkers, New York since 1897

Checking account with National Savings & Trust Company, Washington, D. C., since 1934

Checking account with Riggs National Bank, Washington, D. C. since 1940

Account with Interstate Building Association, Washington, D. C., since 1941

263 In 1940 Henry F. Butler acquired a one-quarter interest in a parcel of real estate in the City of New York with a total value of approximately \$44,000, which was conveyed to a holding company and subsequently sold, after which the holding company held a mortgage secured by the premises. This was liquidated in 1942.

In the District the taxpayers own only the premises at 1671 31st Street, N. W. and do not own any other real estate nor mortgages or trusts secured by real estate in or near the District of Columbia (except insofar as assets of Interstate Building Association may be secured thereby).

15. Taxpayers in every year involved (and consistently since 1920) have returned to their home in Woolwich,

Maine from wherever else they may have been temporarily. They are at present August 1, 1946 at their home in Woolwich, Maine, and they intend always to return to their home in Woolwich, Maine. Taxpayers have never at any time since 1921 ceased to have a year round home in Woolwich, Maine; it is their place of permanent residence and they intend to continue to keep it their place of permanent residence and to live there permanently, wherever else they may happen to be temporarily at any time, and always to return to it (as they have done at the date of this statement).

16. Reference is made to the record in the case of *Butler v. D. C.*, in the U. S. Court of Appeals, above referred to, in which the facts surrounding the activities of the taxpayers prior to 1941 are set forth in detail, showing admitted domicile in Woolwich, Maine from 1921 through 1930, and domicile in the alternative either in Woolwich, Maine or in Cambridge, Massachusetts, 1930-1940. During the entire time, taxpayers had their home exclusively in their possession and available to them at all times in Woolwich, Maine, and they consistently and frequently returned to that home. The U. S. Court of Appeals

found the taxpayers appeared to be domiciled in
 264 Massachusetts during the calendar years 1939 and 1940, but in any event definitely were not domiciled in the District of Columbia in those years.

Nothing has occurred to change their domicile to the District of Columbia since that decision.

As appears in the record of that case, on December 16, 1940, the taxpayers while in Woolwich, Maine requested the Selectmen of the Town of Woolwich again to register them as legal residents and domiciliaries of Woolwich, and they were so registered. In the record of voters in the Town of Woolwich their registration is recorded as of January 1, 1941. Consistently since requesting such registration, the taxpayers have asserted all the rights and complied with all the requirements of domiciliaries of

Woolwich, Maine. In March, 1943 Henry F. Butler was admitted on motion to the Bar of the State of Maine upon satisfying the Supreme Court of the State of Maine that he was domiciled in Woolwich, Maine while he maintained a law office in the District of Columbia.

As appears in the record of the case referred to, taxpayers have at all times maintained a definite intention not to establish a home (domicile) in the District of Columbia. As domicile is predicated on both physical presence in a locality *and* the intention to make that place one's permanent home, a domicile cannot be acquired in the absence of *both* those circumstances; nor can a domicile be acquired in the teeth of a definite, bona fide intent *not* to establish a home at a place where a person happens to be residing for the time being.

The Congress having predicated liability for Income Tax in the District of Columbia upon the fact of domicile on the last day of each tax year, it is clear that if the taxpayers were not domiciled in the District of Columbia on the tax days, they are not liable for income tax in that jurisdiction.

It is submitted as a matter of law that under the facts as they exist, if a Court possibly could find that the
265 taxpayers have not established their domicile in the State of Maine, inasmuch as the Court has found that they were not domiciled in the District of Columbia on the 31st day of December, 1939 and 1940 (and the Administrator correctly has determined they were not domiciled in the District on the 31st day of December 1941) and as they have never established a domicile in the District of Columbia, it necessarily follows that wherever their domicile may be determined to be, it is not in the District of Columbia.

Henry F. Butler and Estelle K. Butler, and each of them hereby certify that all the information appearing on this return, and on any supplemental statement attached

hereto, is true to the best of their knowledge and belief.

/S/ Henry F. Butler
 Henry F. Butler
 /S/ Estelle K. Butler
 Estelle K. Butler

Woolwich, Maine,
 August 1, 1946.

Claim for Refund

Henry F. Butler and Estelle K. Butler filed under protest District of Columbia Income Tax Returns setting forth all of the information required thereon, but claiming domicile in Woolwich, Maine for the years ended on the 31st day of December, 1941, 1942, 1943, 1944 and 1945.

The Tax Administrator recognized that the taxpayers were not domiciled in the District of Columbia on December 31, 1941 and under cover of letter dated April 16, 1942 returned the checks tendered in payment under protest for that year.

As the taxpayers were contesting their liability for the calendar years 1939 and 1940 and the case was pending first in the D. C. Board of Tax Appeals and subsequently in the U. S. Court of Appeals for the District of Columbia, the returns for subsequent years were accepted, but payment of the amounts assessed thereunder deferred pending the outcome of the litigation. The D. C. Tax Administrator declined to recognize the decision and judgment of the U. S. Court of Appeals as settling this issue for subsequent years, and consequently assessments with interest computed at 3 per cent per annum (but without penalties) to June 20, 1946 were made and bills sent to the taxpayers calling for payment on or before July 1, 1946. Accordingly, on July 1, 1946 the taxpayers paid under protest the following items:

<i>For the Calendar</i> <i>Year</i>	<i>Income Tax</i> <i>Assessed</i>	<i>Interest to</i> <i>6/20/46</i>	<i>Total</i>
1942 (HFB)	\$1,280.18	\$118.68	\$1,398.86
1942 (EKB)	1.07	.10	1.17
1943 (Joint)	807.39	50.63	858.02
1944 (Joint)	89.33	2.93	91.26
1945 (Joint)	114.17	.31	114.48

Under the provisions of Section 34 of the District of Columbia Income Tax Act, Henry F. Butler and Estelle K. Butler hereby file this claim for refund of \$2,463.79 (plus interest from date of payment) for income taxes paid by them to the District of Columbia for the taxable years ended December 31, 1942, 1943, 1944 and 1945, such claim for refund being based on the contention that neither Henry F. Butler nor Estelle K. Butler were domiciled in the District of Columbia on the 31st day of December in the years 1942, 1943, 1944 and 1945. Henry F. Butler and Estelle K. Butler, and each of them, hereby certify that all of the information appearing on this return, and on any supplemental statement attached hereto, is true to the best of their knowledge and belief.

/S/ Henry F. Butler
Henry F. Butler
/S/ Estelle K. Butler
Estelle K. Butler

Woolwich, Maine,
August 1, 1946.

STATE OF MAINE

COUNTY OF SAGadahoc ss:

Personally appeared Henry F. Butler and Estelle
267 K. Butler, known to me and known by me to be the
persons who executed the foregoing instrument and
on oath said they know the contents thereof and that the
same are true to the best of their knowledge and belief.

Before me,

/S/ Harry L. Day
Notary Public, Maine

My Commission expires April 3, 1953

Harry L. Day

Seal

Notary Public

* * * *

272

Respondent's Exhibit S

Received in Evidence

December 14, 1948

Department of Corporations & Taxation

State House

Boston, Massachusetts

Gentlemen:

Will you please inform this office as to whether your records indicate that Mr. Henry F. Butler and Estelle K. Butler paid income or other taxes during the 1942-1945 calendar years, inclusive to the State of Massachusetts? During the period 1931 through 1940 they voted in Cambridge, Massachusetts and paid income taxes to the State but we wish to ascertain whether they might have paid any taxes subsequent to the aforementioned period.

Your cooperation in the matter will be appreciated.

Very truly yours,

G. L. Penn

Examiner

Income & Franchise Tax Division

* * * *

271

Respondent's Exhibit R

Received in Evidence

Received Dec 28 1948 Income Tax Division

The Commonwealth of Massachusetts

Department of Corporations and Taxation

State House, Boston 33

Henry F. Long

Commissioner of

Corporations and Taxation

December 17, 1948

Mr. G. L. Penn, Examiner,
Income & Franchise Tax Division,
14th and E Streets, N. W.
Washington (4) D. C.

Dear Mr. Penn:

This is in answer to your letter of December 14th in respect to Henry F. Butler, who formerly lived in Cambridge, Mass.

The records in this Department show that the last return filed by Henry F. Butler was a 1941 return of 1940 income and that no return had been filed with this Department since that date.

In the case of Estelle K. Butler, no returns have ever been filed with this Department.

Very truly yours,
Henry F. Long
Commissioner of Corporations
and Taxation

HFL/MFG

282

Respondent's Exhibit T

THIS RETURN IS FILED UNDER PROTEST,
DURESS AND COMPULSION
DISTRICT OF COLUMBIA
INDIVIDUAL INCOME TAX RETURN
FOR THE CALENDAR YEAR 1942

* * * *

Henry F. Butler

*Legal Residence and Domicile: Woolwich, Maine;
Temporary D. C. Address: 1011 Investment Building,
Washington, D. C.*

* * * *

THIS RETURN IS FILED UNDER PROTEST,
DURESS AND COMPULSION
DISTRICT OF COLUMBIA
INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1942

* * * *

Estelle K. Butler,

Legal Residence & Domicile: Woolwich, Maine

*Temporary D. C. Address: 1011 Investment Building,
Washington, D. C.*

* * * *

286

Respondent's Exhibit U

THIS RETURN IS FILED UNDER PROTEST,
DURESS AND COMPULSION
DISTRICT OF COLUMBIA
INDIVIDUAL INCOME TAX RETURN
FOR THE CALENDAR YEAR 1943

* * * *

Henry F. & Estelle K. Butler

Legal Residence & Domicile: Woolwich, Maine

*Temporary D. C. address: 1011 Investment Bldg.,
Washington, D. C.*

* * * *

294

Respondent's Exhibit V

DISTRICT OF COLUMBIA
INDIVIDUAL INCOME TAX RETURN
FOR THE CALENDAR YEAR 1944

This return is filed under protest, duress and
compulsion.

* * * *

Henry F. & Estelle K. Butler
Legal residence & domicile; Woolwich, Maine.
Temporary D. C. address; 1011 Investment Bldg.
Zone 5

* * * *

301

Respondent's Exhibit W

This return is filed under protest, duress and
 compulsion.

DISTRICT OF COLUMBIA
 INDIVIDUAL INCOME TAX RETURN
 FOR CALENDAR YEAR 1945

* * * *

Henry F. & Estelle K. Butler
Legal Residence & domicile: Woolwich, Maine
Temporary D. C. address: 1011 Investment Building,
Washington, D. C., Zone 5.

* * * *

313

Respondent's Exhibit Y

Received in Evidence

September 29, 1942.

Memorandum to Mr. Merrick:

In discussing the case of Henry F. Butler with Mr. Simon, in attempting to determine how we had reached the conclusion in which we held that Mr. Butler had established domicile in the State of Maine, it was recalled that such conclusion was reached on the basis of information that had been submitted with his 1941 return alone. At that time we did not have available the returns and information attached to his 1939 and 1940 returns, such returns and information probably being in the Collector's Office for payment.

R. J. Dunham

* * * *

BEFORE THE BOARD OF TAX APPEALS OF THE
DISTRICT OF COLUMBIA

320

Tuesday, January 25, 1949.

The above-entitled matter came on for hearing before HONORABLE LAWRENCE KOENIGSBERGER, sole member of the Board, at 10:00 o'clock a. m.

* * * *

321

Estelle K. Butler

was recalled as a witness for and on behalf of the petitioners and, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

BY MR. BUTLER:

Q Did you have a bank account in Maine during any of the years 1941 through 1945? A Yes, all the time.

Q What bank was it with? A Now the Depositors Trust.

Q Where? A Wiscasset.

Q When did you open that account? A 1924, I think. It was Augusta Trust Company then, now Depositors Trust.

Q I hand you Depositors Trust Company monthly bank statements for the months October 1944 through December 1945, with the months of April and May in 1945 missing, and ask you if you can identify those. A They are mine.

Q I asked for the earlier statements, too. Do you have those? A No, I have thrown those away, I am afraid.

MR. BUTLER: May I introduce these in evidence?

* * * *

THE BOARD: Let the exhibit be marked collectively as Petitioners' Exhibit No. 28.

(The document referred to was marked Petitioners' Exhibit No. 28 and received in evidence.)

BY MR. BUTLER:

Q Was the activity of your account substantially the same or substantially greater or less during the years 1941 until October '44, when those statements commenced? A I think practically the same because it was always a house-keeping account.

MR. BUTLER: That is all I have.

* * * *

THE BOARD: The hearing is closed.

* * * *

323 Filed Feb 21 1949 Board of Tax Appeals
For the District of Columbia
Docket No. 1134

* * * *

Findings of Fact and Conclusions of Law

Findings of Fact

1. Petitioner Henry F. Butler was born in Yonkers, New York in 1896. In 1921 he married petitioner Estelle K. Butler, and thereupon set up a home and housekeeping in Woolwich, Maine, living there the year around. In 1926 petitioners purchased a house in Woolwich, Maine which they have continued to own until the present time. In 1927 petitioners went to Cambridge, Massachusetts, where petitioner Henry F. Butler studied law, but petitioners continued to return to Maine periodically. In 1930 petitioner was admitted to the bar of Massachusetts, and thereupon practiced law in Boston until 1934. In 1934 petitioners moved to Washington, D. C., and since that time Henry F. Butler has continuously practiced law, and both petitioners have resided in the District. During each of the years from 1934 through 1945 petitioners have returned periodically to their house in Woolwich, Maine. On December 16, 1940, while in Woolwich, Maine, petitioner wrote the Selectmen of the Town of Woolwich, requesting

that they enroll petitioners on their list of voters in the Town of Woolwich and advise petitioners that they had done so, in order that petitioners might know they would be eligible to attend Town Meeting in 1941, and to vote in all subsequent State and National elections as long as they maintained their residence there.

324 2. Petitioners paid the District of Columbia income taxes for 1939 and 1940 and thereafter filed claims for refund thereof, which were disallowed in 1943. They thereupon appealed to this Board upon the ground that on December 31, 1939 and December 31, 1940 they were domiciled in a State outside of the District of Columbia. This Board, among others, found the facts hereinabove set forth that had occurred up to and including the end of 1940. The Board also found that petitioners were domiciled in Maine during the period 1921 to 1930, and had voted in Maine, both in the local and national elections; that during the period 1931 through 1940 they had voted in Cambridge, Massachusetts, and had paid income taxes to that State; and that in their Federal income-tax returns for the years 1934 through 1940, petitioners had described themselves as legal residents of Cambridge, Massachusetts. The Board further found that petitioners were domiciled in Massachusetts at the time of their arrival in the District in 1934; that they did not, during the entire time of their stay in the District of Columbia, have a fixed and definite intent to return to Massachusetts or Maine; that they did not have such intent on December 31, 1939 or December 31, 1940; and that during the period of their stay in the District of Columbia, they had become domiciled in the District. This Board thereupon affirmed the action of the Assessor in disallowing the claims for refund.

3. Petitioners appealed to the United States Court of Appeals for the District of Columbia. That Court agreed with the finding of the Board that in 1930 petitioners had changed their legal domicile from Maine to Massachusetts, but differed from the Board in hold-

325

ing that petitioners were not domiciliaries of Massachusetts in 1939 and 1940, and held that during 1939 and 1940 they were domiciliaries of Massachusetts, and upon the basis of that holding reversed the action of this Board.

4. Petitioners were in Woolwich in 1941 on at least four different occasions, commencing in May of that year; petitioner Henry Butler paid poll taxes of \$3 per year to Maine in 1941, 1942, 1943, 1944 and 1945, and both petitioners were registered voters in the Town of Woolwich during those years.

5. In 1941 petitioner Henry Butler purchased for \$300 a used 1936 Hudson in Boston, which he drove to Maine and had registered there for 1942. Simultaneously he obtained an automobile operator's license for the period ending December 31, 1941. He obtained a like operator's license for 1942, 1943 and 1945. The automobile has been in Maine continuously since its acquisition.

6. In 1941 Henry Butler undertook the renovation of the Woolwich house, including repair and rebuilding of the cellar, installing an oil furnace and hot air furnace, and painting, at a total cost of about \$2900. That work was completed in 1942.

7. In March 1942 both petitioners attended the annual Town Meeting in Woolwich, and were in Woolwich on several other occasions in that year.

8. In 1943 petitioner was admitted to practice as an attorney in Maine, on motion in which he claimed residence in Maine. In 1943 both petitioners were in Maine on various occasions in August and September, and Henry Butler was also there in March. In 1944 they were in Maine during parts of August and September, and in 1945 they were

there in August. During August and September a
 326 great many people go to Maine for vacations, and
 Maine is what is popularly known as a resort State. Wiscasset, nine miles away, is a summer resort, but Woolwich is a rural farming community and the majority of the people there are year-around residents. Petitioners' house

is completely furnished for year-around living. It is a two-story frame house about 250 years old. For each of the years here involved, petitioners' real property in Woolwich was assessed at \$2960. for taxation. Petitioner Estelle Butler has always spent at least as much time in Maine as Henry Butler, and in some years more. She voted in every biennial State and National election she has been able to vote.

9. During the years here involved petitioners had joint savings accounts in banks as follows:

In Bath, Maine, with a minimum of \$239 and a maximum of \$1623; in Wiscasset, Maine, with a minimum of \$134 and a maximum of \$633; in Yonkers, New York, with a minimum of \$214 and a maximum of \$658. They also had a checking account in a District of Columbia bank, with a minimum of \$201 and a maximum of \$11,309, and in another District of Columbia bank, with a minimum of \$31 and a maximum of \$2552; and a deposit account with a District of Columbia building association, with a minimum of \$235 and a maximum of \$2292. Estelle Butler also had a checking account in a Wiscasset, Maine, bank with a minimum balance of minus \$38 (overdraft) and a maximum of \$719. Henry Butler also had a checking account with a bank in Boston with a balance on December 31, 1941 of \$1048, and with a balance on December 31, 1942 of \$128. There have been no transactions with that bank since that time, and the balance has continued at that figure. The savings accounts have been rather inactive, there having been in all of them, during the entire period here involved, a total of 24 deposits and 11 withdrawals therefrom. The checking accounts in the District have been very much more active, with more than 400 deposits and more than 1500 withdrawals; in Estelle Butler's account in Wiscasset, Maine, there were during this period, about 144 deposits and about 960 withdrawals. In addition, Henry Butler had bank accounts in the District directly connected with his law practice.

10. No State, County or Town personal-property taxes have been assessed against petitioners in Maine during any of the years here involved, and they have paid no such taxes, except on the automobile in Maine. They have paid no Massachusetts income taxes for any period since 1940. Henry Butler's contributions deductible for Federal income-tax purposes were as follows: In 1942, \$1676; in 1943, \$2115; in 1944, \$1382; and in 1945, \$932. Of these the following were to Maine charities: 1942, \$50; 1943, 61; 1944, \$155; and 1945, \$50.

11. With one exception in 1945, when petitioners went to South America, there has not been any month in which they have not been in the District. In December, 1941 petitioners entered into a contract to buy a dwelling in the District at a cost of \$37,000. This transaction was closed in January 1942 and petitioners have lived there ever since. The house consists of a basement and three floors, and it is completely furnished, the contents being about the same quality as those in the Maine house.

12. In 1941 Henry Butler bought an automobile for \$1300. This automobile has been registered in the District during the entire period since then, and Henry Butler has had a District of Columbia operator's permit since that time.

13. Since 1941 and continuously throughout the years here involved, Henry Butler has been a resident
328 member of the Metropolitan Club and a life member of the University Club, both in the District of Columbia. He is also a member of the Princeton Club, the National Republican Club in New York, and the Maine State Society of the District of Columbia.

14. Petitioners filed separate income-tax returns for 1942; Henry Butler paid \$1398.86 for that year, covering tax and interest, and Estelle Butler paid \$1.17 for that year, covering tax. For 1943, 1944 and 1945, petitioners filed joint returns and made the following payments of taxes plus interest:

For 1943	\$858.02
1944	91.26
1945	114.48

All of these payments were made under protest in writing on July 1, 1946. Claims for refund were filed on June 28, 1948 and were denied on September 7, 1948.

On December 3, 1948 petitioners appealed to this Board from the action of the Assessor in denying their claims for refund, upon the ground that they were not domiciled in the District of Columbia on December 31, 1942, 1943, 1944 or 1945.

15. Petitioner Henry Butler testified as follows:

" it has been my consistent intent and purpose not to establish a permanent home in the District of Columbia. And my further intent and purpose to establish my permanent home, voting residence, domicile, in Woolwich, Maine. And that intent has been in my mind when I have been in Maine.

"In this testimony I do not mean to say, and I don't wish it understood, that I do not like or have any dislike for the District of Columbia. I am very fond of this city. I will be frank in saying my motivating principle within my mind is that I prefer to have my home and my domicile in a place where I can vote and exercise my franchise and have national representation.

329 "I hesitate to say that I expect to return to Maine permanently at a fixed time because I think that is irrelevant. I periodically return to Maine. I would never want to live any place twelve months a year.

"I expect to make my residence in Washington less as the years go on, and I hope I will never be unable to come to Washington occasionally"

* * * *

" I would expect to continue to have matters in the District of Columbia no matter where I am practicing in the United States. It is a Federal practice with which

I am familiar. If the seat of government moved to some other place, I will move with it, for the practice.

"Now, I have matters that I have attended to in Maine. I have gone to Maine for the express purpose of attending to law matters in Maine, and it is impossible to say that I expect, or to state when I expect to what you call 'pull up stakes' from Washington and live permanently in Maine.

"The question is not susceptible to answer. I expect to spend considerably more time in Maine and less in Washington than during the war years, commencing now, or having already — well, commencing and building up. But I can not say that I ever expect to pull up stakes from any place and settle permanently in another.

"I will say that I maintain my home in Maine, and I go there whenever I can. I return there whenever I get a chance for business or pleasure, and I will do it more and more."

16. Petitioners have not at any time during 1942, 1943, 1944 or 1945 intended to return to Massachusetts and resume their former home in that State.

Petitioners have not established domicile in Maine during any part of the years 1942, 1943, 1944 or 1945.

330 17. On the 31st days of December, 1942, 1943, 1944 and 1945, petitioners were domiciled in the District of Columbia.

Conclusions of Law

1. Petitioners having been domiciled in the District of Columbia on December 31, 1942, December 31, 1943, December 31, 1944 and December 31, 1945, were liable for District of Columbia income taxes for those years levied by the District of Columbia Revenue Act of 1939.

2. The action of the Assessor in disallowing petitioners' claims for refund of their income taxes paid for those years should be affirmed.

Decision will be entered for respondent.

/s/ Lawrence Koenigsberger
Lawrence Koenigsberger,
Member Sole,
Board of Tax Appeals for
the District of Columbia.

* * * *

331 Filed Feb 21 1949 Board of Tax Appeals
For the District of Columbia

Memorandum

In *Butler v. District of Columbia*, 80 U. S. App. D. C. 310, 153 F. 2d 617, involving these petitioners, the Court of Appeals held that throughout the years 1939 and 1940, they were domiciliaries of Massachusetts, and, by clear implication, since a person cannot have more than one domicile at a time, that during those years they were not domiciliaries of Maine.

That decision is binding on this Board in this proceeding, to the extent that the facts in that case are identical with, or analogous to those in this, whether by an application or res judicata; *Tait v. Western Maryland Railway Co.*, 289 U. S. 624; *The Evergreens v. Nunan*, 141 F. 2d 927; collateral estoppel, *Commissioner v. Sunnen*, 333 U. S. 591, or stare decisis.

Petitioners have not contended or offered any evidence in this proceeding tending to show any intent to return to Massachusetts, and therefore their Massachusetts domicile has been abandoned.

This case is thus brought within the rule of *District of Columbia v. Murphy*, 314 U. S. 441, 454, that "... persons are domiciled here [in the District] who live here and have no fixed and definite intent to return and make their home where they were formerly domiciled." The phrase

332 "formerly domiciled" undoubtedly refers to domicile immediately prior to coming to the District, in this case Massachusetts, and not to a domicile an-

terior to that (Maine). The *Murphy* case further holds that the place where a man lives is properly taken to be his domicile until facts adduced establish the contrary, and that the taxing authority is warranted in treating as prima facie taxable any person quartered in the District on the tax day whose status it deems doubtful.

Petitioners' position seems to be that their actions after 1940 were such as to transfer their domicile from Massachusetts to Maine.

The Court of Appeals had before it the same facts as those that appear in this case and which had occurred up to and including December 31, 1940, as to petitioners' intentions regarding living in Maine; the fact that on December 16, 1940 Henry Butler had requested the Selectmen of the Town of Woolwich, Maine, to enroll petitioners on their list of voters in that Town; and their ownership of a completely furnished house in Woolwich, and their occasional visits to Maine throughout the entire period from 1934 to and including 1940.

The only new features present in this proceeding that were not present in the prior proceeding, were the continuance of petitioners' visits to Maine after 1940, which were of the same general nature as those before and during that year; the admission of Henry Butler to the Maine Bar; his acquisition of a used automobile for \$300, and the keeping and registration of it in the State of Maine; the issuance to Henry Butler of automobile operator's licenses for each of the years here involved; the renovating of the Woolwich house at a cost of \$2900; petitioners' registration as voters in Maine throughout the period 1942 to 1945, inclusive; their attendance at Town Meeting in Woolwich in
 333 March, 1942; their discontinuance of payment of Massachusetts income taxes; and Henry Butler's payment of poll taxes in Maine of \$3 per year.

Petitioners did not pay any taxes on personal property in Maine except on the automobile that was kept there. On the other hand, in 1941 they purchased a house in the Dis-

trict at a cost of \$37,000, furnished it, and have occupied it ever since. In the same year Henry Butler bought a new automobile for \$1300, which he has kept and registered in the District of Columbia, and he has had a District of Columbia automobile operator's permit since that time.

Petitioners cite the Restatement of Law (Conflict of Law) section 15 (3), to the effect that the fact of physical presence at a dwelling-place and the intention to make it a home must concur, and that if they do so, "even for a moment", the change of domicile takes place. This must be read in connection with comment on section 18 of the same volume, to the effect that the intention to make a new home involves to a certain extent the idea of fixity, and that a person does not intend to make a place his home unless he has an intention to remain there for a time at least. In order to acquire vitality and effect a change in legal status, the intent to acquire domicile must be accompanied by more than momentary contact with the soil of the chosen State, such as was sufficient in the case of Antæus, *Bullfinch, Age of Fable*, chap. XIX, or — to take a more modern instance, — the touching of a base by a base-runner, *Rule of Baseball*, 45, section 1. Petitioners' visits to Maine for recreation or business purposes, with the intent to return to the District after the accomplishment of those purposes, even if accompanied by an intention of making it their domicile and at some time in the future returning there permanently, were not sufficient to establish Maine as their home.

334 So far as their voting in Maine is concerned, it is sufficient to say that while the fact that a person continues to vote in the place which was his domicile immediately prior to coming to the District, is highly relevant although not controlling. Voting in a place other than such immediately intercedent domicile has no effect except to evidence an intent to acquire a domicile therein. In other words, the right to vote is a consequence, but not a generator of domicile.

The circumstances here shown are not sufficient to establish Maine domicile for petitioners in any of the years here involved.

/s/ Lawrence Koenigsberger
Lawrence Koenigsberger,
Member Sole,
Board of Tax Appeals for
the District of Columbia.

* * * *

335 Filed Feb 21 1949 Board of Tax Appeals
For the District of Columbia
Docket No. 1134

Decision

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof and of the evidence adduced at the hearing on said petition, it is, by the Board, this 21st day of February, 1949,

ADJUDGED and DETERMINED, That the action of the Assessor in disallowing the claims of petitioners Henry F. Butler and Estelle K. Butler, for refund of income taxes for the calendar years ended December 31, 1942, December 31, 1943, December 31, 1944, and December 31, 1945, herein appealed from, be, and it is hereby, affirmed.

/s/ Lawrence Koenigsberger
Lawrence Koenigsberger,
Member Sole,
Board of Tax Appeals for
the District of Columbia

* * * *

338 Filed Mar 22 1949 Board of Tax Appeals
 For the District of Columbia
 Docket No. 1134

*Petition of Taxpayers for Review by the United States
Court of Appeals for the District of Columbia
of a Decision by the Board of Tax Appeals
For the District of Columbia*

Taxpayers, the petitioners in this cause, by Henry F. Butler, one of the taxpayers and counsel for the taxpayers, hereby file their petition for review by the United States Court of Appeals for the District of Columbia of the decision of the Board of Tax Appeals for the District of Columbia rendered February 21, 1949, which determined that income taxes for the years ended December 31, 1942, December 31, 1943, December 31, 1944 and December 31, 1945 were not erroneously collected by the District of Columbia from the petitioners, and that the petitioners Henry F. Butler and Estelle K. Butler are not entitled to any refund thereof, and of the findings of fact, conclusions of law and opinion on which said decision is predicated.

I

Petitioners are citizens of the United States and claim to be legal residents and domiciliaries of the Town of Woolwich, State of Maine.

II

Nature of the Controversy

(a) The controversy involves the question of the domicile of the petitioners on December 31, 1942, December 31, 1943, December 31, 1944 and December 31, 1945 and the legality of the collection from them of income taxes by the Government of the District of Columbia for the calendar years ended December 31, 1942, December 31, 1943, December 31, 1944 and December 31, 1945.

(b) The petitioners since 1921 have had and retained

legal voting residence and domicile in the Town of Woolwich, State of Maine or in the City of Cambridge, Commonwealth of Massachusetts. Petitioners from a time long prior to 1942 and during the years 1942, 1943, 1944 and 1945 and down to the present time owned and still own the dwelling house in the Town of Woolwich, State of Maine in which they resided before coming to the District of Columbia, which since acquisition prior to 1942 was, and ever since has been, their place of permanent residence and abode, to which place the petitioners have always returned following each temporary sojourn elsewhere, and to which place they have always and still do intend to return for permanent residence and abode following their temporary sojourn in the District of Columbia. From 1921 through 1930 petitioners voted and paid all requisite taxes as domiciliaries in the Town of Woolwich, State of Maine; from 1930 through 1940 petitioners voted and paid all requisite taxes as domiciliaries in the City of Cambridge, Commonwealth of Massachusetts; from 1940 down to and including the present time petitioners have voted and paid all requisite taxes as domiciliaries in the Town of Woolwich, State of Maine. During the calendar year 1941 and the first part of 1942 petitioners, when in the District of Columbia, occupied rented premises at 2018 Hillyer Place, N. W.; from the early part of 1942 to the present petitioners, while in the District of Columbia, have occupied premises which they own at 1671 - 31st Street, N. W.

(c) Petitioners filed District of Columbia income tax returns for the calendar years 1942, 1943, 1944 and
 340 1945 and paid the taxes computed thereon under protest, duress and compulsion on July 1, 1946; they filed claim for refund of said taxes on June 28, 1948 and such claim was considered and disallowed on September 7, 1948. Within the time by law allowed, to wit, on December 3, 1948 petitioners filed their petition for a reversal of the disallowance of their claim for refund of income taxes paid to the District of Columbia for the

calendar years 1942, 1943, 1944 and 1945, and for a refund of those taxes. On February 21, 1949 their petition was denied.

III

The petitioners being aggrieved by the findings of fact and conclusions of law contained in the said findings and opinion of the Board of Tax Appeals and by its decision entered in pursuance thereto, desire to obtain a review thereof by the United States Court of Appeals for the District of Columbia and determination by that Court that petitioners were not domiciled in the District of Columbia on December 31, 1942, December 31, 1943, December 31, 1944 and December 31, 1945 nor at any other time and reversal of the decision of the Board of Tax Appeals and order for decision and judgment consistent with the findings.

/s/ Henry F. Butler

/s/ Henry F. Butler

Petitioner

and

Counsel for Petitioners

• • • •

Petitioner's Exhibit No. 26

Woolwich, Maine
Annual Report of Town Officers
For the Year Ending February 15th, 1944

* * * *

Assessor's Report

Real Estate, Resident	\$362,515 00	
Real Estate, Non-Resident	173,405 00	
Total Real Estate		\$535,920 00
Personal Estate, Resident	\$ 21,387 00	
Personal Estate, Non-Resident	12,754 00	
Total Personal Estate		\$ 34,141 00
Grand total valuation		\$570,061 00
Value of Land	\$229,096 00	
Value of Buildings	306,824 00	
	\$535,920 00	

COMMITMENTS

State Tax	\$ 4,243 77
County Tax	1,462 03
Appropriations	22,361 75
Overlay	283 15
Total Commitment	\$ 28,350 70

ASSESSMENTS

Rate of Taxation \$.046 on \$1.00	
\$570,061.00 @ \$.046	\$ 26,222 70
376 Polls @ \$3.00	1,128 00
Amount Transferred from Excise	
Tax Account	1,000 00
	\$ 28,350 70

TAXABLE LIVE STOCK AND POULTRY

	Number	Total Value
Horses	49	\$ 4,125 00
Cows	165	4,950 00
Oxen	2	40 00
3 Year Olds	34	680 00
2 Year Olds	42	630 00
Poultry over 50 in number	265	132 00
Sheep over 35 in number	18	75 00
		\$10,632 00

EXEMPT LIVE STOCK AND POULTRY

	Number
Yearlings	80
Sheep (to 35 in number)	45
Poultry (to 50 in number)	1377
Swine	26

ALL OTHER KINDS OF PERSONAL PROPERTY

	Number	Total Value
Stock in Trade	4	\$ 1,325 00
Portable Mills	4	1,450 00
Lumber	3	3,120 00
Wood and Bark	25	75 00
Boats	58	2,875 00
Gasoline Pumps	21	2,500 00
Musical Instruments (over \$50.00 in value)	2	200 00
Radios	310	3,405 00
Machinery and Equipment	3	4,400 00
Other Property	7	5,239 00
		\$24,589 00

INDUSTRIAL AND UTILITY PROPERTY

	Number	Total Value
Railroad Property	1	\$ 1,155 00
Water Company	1	3,262 00
Light and Power Company	1	62,277 00

PROPERTY OWNED BY THE TOWN

Town Dump
 Fish Privilege and Fish House
 Hose House
 Two Sanding Machines
 Tractor and Snow Plow
 Two Snow Blades
 One V Plow
 Two Road Machines
 Nineteen Indian Fire Pumps
 5,950 Feet Snow Fence
 Two Double Room Schoolhouses
 Six Single Room Schoolhouses
 One Town House
 \$17,400 Fire Insurance Carried on Schoolhouses and Town House.

FRANK R. BAILEY,
 EBEN DANA,
 WILLIAM H. SOULE,
 Assessors of Woolwich.

FILED AUG 15 1943

Joseph W. Stewart

No. 10,243

BRIEF FOR PETITIONERS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

— 50 —
HENRY F. BUTLER and ESTELLE K. BUTLER,
Petitioners,

VS.

DISTRICT OF COLUMBIA,
Respondent.

—
**Petition for Review of Decision of the Board of Tax
Appeals for the District of Columbia**

—
HENRY F. BUTLER,

Investment Building,
Washington, D. C.

Attorney for Petitioners.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,243

HENRY F. BUTLER and ESTELLE K. BUTLER,
Petitioners,

VS.

DISTRICT OF COLUMBIA,
Respondent.

Petition for Review of Decision of the Board of Tax
Appeals for the District of Columbia

BRIEF FOR PETITIONERS

JURISDICTIONAL STATEMENT

Petitioners paid under protest on July 1, 1946 to The District of Columbia income taxes for the calendar years 1942 through 1945 (with interest computed to June 20, 1946) as follows:

1942 (HFB) tax \$1,280.18, interest \$118.68, total \$1,398.86
1942 (EKB) tax \$1.07, interest \$.10, total \$1.17
1943 (Joint) tax \$807.39, interest \$50.63, total \$858.02

1944 (Joint) tax \$89.33, interest \$2.93, total \$91.26

1945 (Joint) tax \$114.17, interest \$.31, total \$114.48.

Petitioners filed claims for refunds on June 28, 1948 which were disallowed on September 7, 1948. They filed petition for review with the Board of Tax Appeals for the District of Columbia on December 3, 1948. The Board rendered its decision sustaining the taxes on February 21, 1949 and petitioners filed their petition for review by this Court on March 22, 1949.

The jurisdiction of this Court is invoked under the provisions of Sec. 4, Title IX, of the District of Columbia Revenue Act of 1937, as amended, (D. C. Code, 1940, Title 47, Sec. 2404).

This Court has the power to review decisions of the Board of Tax Appeals as under the equity practice in which the whole case, both facts and law, is open for consideration in the appellate court. (*D. C. v. Pace*, 320 US 698-703; *Butler v. D. C.*, 153 F. 2d 617, 618).

STATUTES INVOLVED

District of Columbia Code (1940) Title 47; Sec. 1502. IMPOSITION OF TAX RATE“ (a). *Tax on Individuals*. There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates . . .”

Sec. 1534. REFUNDS. “Except as otherwise provided in Section 47-1531 of this title, where there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment shall be refunded to the taxpayer. No such refund shall be allowed after two years from the time the tax is paid unless before the expiration of such period a claim therefor is filed by the taxpayer . . . If the assessor disallows any part of a claim for refund, he shall

send to the taxpayer by registered mail a notice of the part of the claim so disallowed. Within ninety days after the mailing of such notice, the taxpayer may file an appeal with the Board of Tax Appeals for the District of Columbia . . .”

Sec. 2404. REVIEW BY COURT. “(a) The decision of the board may be reviewed by the court as hereinafter provided if a petition for such review is filed by either the District or the taxpayer within thirty days after the decision is rendered. . . .”

Revised Statutes of Maine, relating to taxation, 1930 Edition, Chap. 13, Secs. 2, 5, 6, 70 and 71; 1944 Edition, Chap. 81, Secs. 1, 2, 5, 6, 35, 36 and 37. Copies have been furnished the Board and appear with the original Exhibits, not printed in Joint Appendix.

STATEMENT OF THE CASE

(Involving the years 1942, 1943, 1944 and 1945)

Petitioners claim that they were not domiciled in the District of Columbia on the 31st day of December in any of the years 1942, 1943, 1944 or 1945, or at any other time, but at all those times were domiciled in Woolwich, Maine; that at all times from 1921 through the present they have had their permanent home in Woolwich, Maine, and they have been domiciled in Woolwich, Maine or in Cambridge, Massachusetts, and never in the District of Columbia; that at all times from 1921 through the present they have had the intention of making their permanent home and of being domiciled, and have in fact made their permanent home and have been domiciled, in a locality and state outside of the District of Columbia; and conversely that during these years they have had the definite intention not to make their permanent home and not to be domiciled in the District of Columbia; that at all times here involved they intended, and they continue to intend to sojourn only temporarily in the District of Columbia and to retain and

return to their home in Woolwich, Maine, for permanent residence, as they continually have done each year, participating in elections, attending town meetings, paying all taxes assessed to them as domiciliaries of that town, attending to the duties and enjoying the benefits incident to the maintenance of a permanent home, and they have never intended to establish a permanent home elsewhere. (2 App - 5 App.).

Previous Case Before This Court

(Involving the years 1939 and 1940)

The question of the domicile of these petitioners for the calendar years 1939 and 1940 was before this Court in *Butler et al v. District of Columbia*, No. 8922, on appeal from the Board of Tax Appeals for the District of Columbia which had held these petitioners were domiciled in the District of Columbia on the 31st days of December 1939 and 1940. Petitioners alleged that they had been domiciled in Woolwich, Maine from 1921 to 1930; that from 1930 through 1940 they were domiciled either in Woolwich, Maine, or in Cambridge, Massachusetts but that in any event they were not domiciled in the District of Columbia during 1939 and 1940, or at any other time. This Court confirmed the finding of the Tax Board that the petitioners had been domiciled in Maine from 1921 to 1930, and that they had changed their domicile from Maine to Massachusetts in 1930. However, this Court found that petitioners had never established a domicile in the District of Columbia and that their domicile in the State of Massachusetts continued during the years 1939 and 1940, and reversed the decision and the judgment of the Board. (*Butler v. District of Columbia*, 80 U. S. App. D. C. 310; 153 F. 2d 617, 618, 619).

1941 Not In Issue

In April, 1942, petitioners, alleging their domicile during 1941 and thereafter to have been in Woolwich, Maine, filed under protest District of Columbia Income Tax Returns for the calendar year 1941, accompanied by their checks in tender of payment and Claims for Refund. The Administrator of the Income Tax Division of the District of Columbia found that petitioners were not domiciled in the District of Columbia on the 31st day of December 1941 and returned to them their checks. That determination by the Administrator was never cancelled or revoked, no Income Tax was ever assessed against the petitioners for the year 1941, and none paid; (R. Ex. Q at 86 App.).

As the District Government recognized that petitioners were domiciled in Maine in 1941 and collected no Income Tax, that year did not come before the Board and is not in issue here, except in-so-far as it may be determinative of petitioners' domicile in the years here involved, (11 App; P. Ex. 14 at 61 App, 62 App.).

QUESTIONS INVOLVED

The sole issue is whether petitioners were domiciled in the District of Columbia on the 31st days of December in the years 1942, 1943, 1944 and 1945, or any of those years. This resolves itself into three questions:—

1. Did petitioners have the legal capacity to change their domicile from Massachusetts back to Maine,

2. Did they in fact change their domicile from Massachusetts back to Maine at any time during the period January 1, 1941 to December 31, 1942, or at any other time through December 31, 1945, and

3. If petitioners did change their domicile from Massachusetts back to Maine, did they subsequently change their domicile from Maine to the District of Columbia?

STATEMENT OF THE FACTS

Petitioner Henry F. Butler was born in Yonkers, New York in 1896; Petitioner Estelle K. Butler was born in Lexington, Kentucky in 1895; they were married in Virginia in 1921, and thereupon established their home in Woolwich, Maine, where they lived the year around, exercising all of the rights and assuming all of the burdens of inhabitants of Woolwich, Maine. In 1926 petitioners purchased their present home in Woolwich, Maine. (6 App., 7 App.; R. Ex. Q at 86 App.).

In the fall of 1927, Henry F. Butler was admitted to Harvard Law School and petitioners went to Cambridge, Massachusetts, but continued to return to Maine periodically. In 1930, Henry F. Butler was admitted to the Bar of Massachusetts and became affiliated with a law firm in Boston where he practiced until 1934, at which time he obtained leave of absence and, with his wife, came to Washington to practice law with his father, now deceased. In each year, 1934 through 1945, petitioners have returned periodically to their home in Maine. (7 App.).

On December 16, 1940, while in Woolwich, Maine, Henry F. Butler wrote to The Selectmen of the Town of Woolwich stating that he and his wife desired again to be residents, domiciliaries and voters in the Town of Woolwich and requested that they be recorded as voters on the Town voting list, eligible to vote commencing in 1941, and asked that he be advised of their action by endorsement on a copy of his letter. The three Selectmen and the Town Clerk signed an endorsement dated December, 1940 stating "in compliance with your request, Henry F. Butler and Estelle K. Butler have been listed as residents and voters in the Town of Woolwich, and will be eligible to vote in the 1941 Town Meeting and other elections". (7 App, 8 App. P. Ex. 1 at 58 App.).

Woolwich, Maine, is a rural farming community, rather than a summer resort. The majority of people in Woolwich are year-around residents; there are very few summer people there. (46 App.).

Throughout 1941 and down to the present time petitioners have owned their home in Woolwich, Maine (the same home which they have owned since 1926). In 1941 it had an approximate value of \$10,000. (R. Ex. A at 66 App.) It is a very old farm house and, like the other houses in Woolwich, is of frame construction. (45 App.). There is a finished cellar; on the ground floor there are two halls, large kitchen, dining room, library, living room, two bedrooms, and a bath; on the second floor, three bedrooms, two baths, two halls. There are also a garage, studio and large barn. The house is equipped with electric lights, electric range, percolators, toasters, etc., running water, hot air furnace (installed in 1941; see R. Ex. A at 74 App.), fireplaces in every downstairs room. (44 App.).

Petitioners' home in Woolwich is, and during 1941 and the years here involved was, completely furnished, largely in colonial antique furniture, for normal, permanent home living, with everything that a year-around house would have, good rugs, nice curtains and pictures. It is large and commodious. It is not a place for summer camping out; it would be a place of unusual comfort in winter; outstandingly a winter place. (37 App, 38 App, 44 App.).

In 1941 and down to the present petitioners have owned approximately 750 acres of land (including the parcel of about 150 acres on which their home is located) in the adjoining towns of Woolwich and Westport, Maine. (R. Ex. E and Q at 82 App., 89 App., 90 App.).

Both petitioners were in Woolwich, Maine in the year 1941 on at least four occasions, commencing in May, and also in July, August and November, aggregating about two months' time. (8 App.; R. Ex. A at 66 App., 75 App.).

In 1941 petitioners undertook a considerable amount of work in renovating and renewing their home in Woolwich, including repairing and rebuilding the cellar and putting in a new cellar floor which cost around \$1,200; installing an oil burner, hot air furnace which cost approximately \$700, and entering upon a program of painting within and without the house which came to a total cost of well over \$1,000. This program was completed in the summer of 1942. (10 App., 11 App.; R. Ex. A at 74 App., 75 App.).

Commencing with the calendar year 1941 and through each year, 1942, '43, '44 and '45, the petitioners were registered voters in the Town of Woolwich, Maine (9 App., P. Ex. 3 at 59 App., 60 App.).

Petitioners have voted, usually in person, in Woolwich, Maine, in all State and National elections since 1940. (38 App., 45 App., 51 App., R. Ex. A at 67 App.).

In 1941 Henry F. Butler paid real estate taxes in the Town of Woolwich, Maine and also in the adjoining Town of Westport, Maine, but he was assessed and paid a poll tax and an automobile tax only in the Town of Woolwich, as the poll and automobile taxes are assessed only where the taxpayer is an inhabitant. He has been assessed and has paid poll and automobile taxes in the Town of Woolwich, Maine for each of the years here involved, 1942, 1943, 1944 and 1945. (8 App., 9 App.; P. Ex. 2, 3, 4, 5, 6, 7 and 8 at 58 App.-2, 59 App. - 61 App.).

In Maine the towns are required to assess poll taxes to their inhabitants, unless exempted, and are permitted, but not required, to assess various different kinds of personal property, tangibles and intangibles. The Town of Woolwich does not assess intangible personal property to the inhabitants. The Annual Report of the Assessor of the Town of Woolwich for the year ending February 15, 1944 furnishes an example of the classes of personal property assessed for taxation. (15 App., 16 App.; P. Ex. 26 at

114 App. - 116 App.). The Maine Statutes involved are Revised Statutes of Maine, 1944 Edition, Chap. 81, Secs. 1, 2, 5, 6, 35, 36, 37; 1930 Edition, Chap. 13, Secs. 2, 5, 6, 70, 71. (Copies with original Exhibits, not printed in Joint Appendix).

In 1941 Petitioner purchased a used automobile in Boston, took it into Maine, registered it in Maine and kept it in Maine. (24 App.).

In 1941, Henry F. Butler, who had a District of Columbia automobile operator's permit, obtained a State of Maine automobile operator's permit, which was necessary for an inhabitant of the State, but not for one who was not an inhabitant of the State (and who had a driver's permit from some other State). He also obtained a Maine operator's permit for each of the years 1942, '43, '44 and '45. In each instance he gave Woolwich as his home (mail address, Wiscasset, Maine). (9 App., 10 App., 25 App.; P. Ex. 9, 11, 12 and 13 at 60 App. 5, and with original exhibits, not printed in Appendix).

On their District of Columbia and Federal Income Tax Returns for the calendar years 1941, '42, '43, '44 and '45 petitioners gave as their legal residence and domicile "Woolwich, Maine". (P. Ex. 27, R. Ex. T, U, V and W, P. Ex. 16, 17, 18, 19, 20 and 21; respectively at 65 App, 96 App., 97 App., 98 App., 63 App., 64 App.).

For a number of years from 1930 through 1940, Henry F. Butler filed Income Tax Returns and paid income taxes in the Commonwealth of Massachusetts, and petitioners stated on the Federal and District of Columbia Income Tax Returns which they filed for those years that they claimed legal residence and domicile at 30 Shepard Street, Cambridge, Massachusetts, as appears from the record in the previous case before this Court, (and see *Butler v. District of Columbia*, 153 F. 2d 617, at 618). However, neither petitioner filed any Income Tax Return or paid any tax in

the Commonwealth of Massachusetts for any year subsequent to 1940. (R. Ex. R at 95 App., 96 App.). In the previous case this Court had before it the letter which Henry F. Butler had written to the Commissioner of Corporations and Taxation of Massachusetts on September 9, 1942 informing him *inter alia* that he was then "a resident and domiciliary of the State of Maine", and no longer of the Commonwealth of Massachusetts. (See Joint Appendix in previous case, Respondent's Exhibit B, pages 72-75.)

In April, 1942, petitioners filed under protest separate District of Columbia Income Tax Returns for the calendar year ended December 31, 1941, alleging legal residence and domicile in Woolwich, Maine, and simultaneously filed Claims for Refund of the payments tendered, specifically pointing out that in previous years between 1935 and December 31, 1940, they had claimed Cambridge, Massachusetts as their legal residence and domicile, but that they had effected a change of domicile back to their home in Woolwich, Maine, and therefore they claimed domicile in Woolwich, Maine, on the 31st day of December, 1941. (P. Ex. 27, R. Ex. A at 65 App. - 75 App.). On April 16, 1942, the Administrator of the Income Tax Division of the Office of the Assessor of the District of Columbia advised Henry F. Butler that inasmuch as his office believed the petitioners had established their claim of domicile outside the District of Columbia on the last day of the taxable year 1941, their checks (tendered in payment of District of Columbia Income Taxes) were returned. That determination never has been cancelled or revoked, although R. J. Dunham, an employee of the District Income Tax Division, a witness for Respondent, testified to a conference with Mr. Simmon, apparently on or before September 29, 1942 discussing why they had "held that Mr. Butler had established domicile in the State of Maine." (P. Ex. 14 at 61 App., 62 App.; 54 App., R. Ex. Y at 98 App.).

In March, 1942, both petitioners attended the Annual Town Meeting in Woolwich, and were in Woolwich on several other occasions in that year.

In March, 1943 Henry F. Butler attended the Woolwich Town Meeting, and both petitioners were in Maine on various occasions in August and September. (11 App.). In 1943 Henry F. Butler applied for admission to practice before the courts of Maine on motion claiming residence in Maine, and was so admitted at Augusta, Maine in the March term. (11 App.; P. Ex. 15 at 62 App., R. Ex. Q at 92 App.).

In 1944 and in 1945 both petitioners were in Maine on several occasions. (12 App.). Petitioners have spent between 3 weeks and 3 months in Woolwich each year. (48 App.).

Petitioners had active bank accounts,

in Yonkers, New York (savings) since 1897 (HFB, then joint)

in Bath, Maine (savings) since 1924 (joint)

in Wiscasset, Maine (checking) since 1924 (EKB)

in Wiscasset, Maine, (savings) since 1924 (joint)

in Boston, Massachusetts (checking) since 1930 (joint)
(relatively inactive since 1942)

in Washington, D. C. (checking), one since 1934, one since 1940 (joint) (R. Ex. Q at 90 App.).

During the years here involved, both petitioners were members of the Maine State Society in the District of Columbia and the South Woolwich Volunteer Fire Society, in Woolwich, Maine; Henry F. Butler was, during all those years, a member of the Princeton Club of New York, the National Republican Club of New York, the Cap and Gown Club of Princeton, New Jersey, the University Club of the District of Columbia and the Metropolitan Club of the

District of Columbia, as well as of professional organizations in Massachusetts, New York, Illinois, Pennsylvania and the District of Columbia. (R. Ex. Q at 89 App.).

Petitioners have stated that at all times since 1921 they have had the intention of maintaining their permanent home, and consequently of being domiciled, in a locality and state outside of the District of Columbia, and conversely have had a definite intention not to establish their home and consequently not to be domiciled, in the District of Columbia; and that during the years here involved they have constantly intended to return to their home in Woolwich, Maine for permanent residence and have never intended to establish a permanent home or permanent residence elsewhere. (4 App., 16 App., 35 App.).

In his letter to The Selectmen of the Town of Woolwich dated December 16, 1940, Henry F. Butler expressed the intent and desire of himself and his wife to be residents, domiciliaries and voters in the Town of Woolwich, Maine. (P. Ex. 1 at 58 App.).

Henry F. Butler necessarily expressed intent to be a permanent resident of the State of Maine in connection with his application for admission on motion to practice before the Supreme Judicial Courts of that State, and in admitting him that Court found he was "of Woolwich." (11 App.; P. Ex. 15 at 62 App.).

At the hearing on this case, Henry F. Butler testified:

"... It has been my consistent intent and purpose not to establish a permanent home in the District of Columbia, and my further intent and purpose to establish my permanent home, voting residence, domicile, in Woolwich, Maine and that intent has been in my mind when I have been in Maine." * * * "I expect to make my residence in Washington less and less as the years go on, and I hope I will never be unable to come to Washington occasionally." (16 App., 17 App.).

In their claim for refund executed in April, 1942, relating to 1941 income taxes, both petitioners expressed their intent to maintain their permanent residence at Woolwich, Maine, and to be domiciled in the State of Maine. (R. Ex. A at 65 App. - 75 App. R. Ex. G with original exhibits, not printed in Joint Appendix).

In his letter to the Assessor of Taxes D. C., of July 21, 1943, Henry F. Butler expressed his intent to be domiciled in Woolwich, Maine and not at any time to be domiciled in the District of Columbia; and stated that his claim of domicile in Woolwich, Maine, and of no domicile in the District of Columbia pertained equally to all years since 1940. (R. Ex. E at 76 App., 77 App.).

In various letters to various tax officials of the District Government in 1942, 1943, 1944 and 1946 petitioner consistently expressed intent to maintain permanent residence and home in Woolwich, Maine, from and after 1940, and consequently to be domiciled in that State and conversely not to establish or maintain a permanent home in the District of Columbia and consequently not to be domiciled in the District of Columbia. (R. Ex. H, I, J, K, L, M, N, O, P, with original exhibits, not printed in Joint Appendix).

On Cross Examination, petitioner Henry F. Butler testified that during the year 1941 and subsequently he contended he was domiciled in Woolwich, Maine. (33 App.). To the question "and when do you intend to go back to Woolwich?" he replied, "Probably March of this year". And to the further question, "To remain there, to make your home I mean," he replied, "My home is there." (33 App.).

In response to the question "... when do you expect to pull up stakes in the District of Columbia, get rid of your law practice, and your home here, and go back to Woolwich and live, physically reside there permanently?" Petitioner replied "... I don't think it is a question of

'going back to Maine.' I maintain a home in Maine. I go there the same as anybody goes to any home of his own." The Board interposed to say "... The question was, when do you intend to give up your practice in the District, discontinue your home here, and go to Maine to remain there permanently as distinguished from maintaining a place of abode in the District ..." to which the petitioner replied "I sincerely hope that I will never have to give up my practice wherever it may be. I had matters in the District of Columbia while I was practicing in Boston. I would expect to continue to have matters in the District of Columbia no matter where I am practicing in the United States. It is a Federal practice with which I am familiar. If the seat of Government moved to some other place, I move with it for the practice. Now, I have matters that I have attended to in Maine. I have gone to Maine for the express purpose of attending to law matters in Maine, and it is impossible to say I expect, or to state when I expect, to what you call 'pull up stakes' from Washington and live permanently in Maine. The question is not susceptible to answer. I expect to spend considerably more time in Maine and less in Washington than during the war years, commencing now. . . . But I cannot say that I ever expect to 'pull up stakes' from any place and settle permanently in another. I will say that I maintain my home in Maine, and I go there whenever I can. I return there whenever I get a chance for business or pleasure, and I will do it more and more." Petitioner also stated "... I am maintaining a home there now, and I expect to spend more time there as opportunity presents itself. The World War interfered with the plans of most of us." (33 App. - 35 App.).

Cornwell B. Rogers, a witness for the petitioners, testified that he had known Henry F. Butler since 1916 and Estelle K. Butler since 1921, that he had bought a place in Woolwich, Maine, in 1925, and had been there frequently since that date; he claims domicile in Woolwich, Maine, and votes there; he has been entertained at petitioners' house

there over a long period of years. In response to the question "now, limiting this to these particular years, was it normal home living, or was it summer camping out?" he replied "It is normal home living, with everything that goes with that. By that, I mean a room for guests and such friends and entertaining that would go with a settled life." In response to the question whether petitioners had in his presence said anything in regard to their "intention to make Maine a permanent home, a domicile" he replied "... my feeling is it has been a permanent home since — that it was in 1921 a home at the time of your marriage. So there wasn't any question of intention. It was a thing I accepted as the situation." (36 App. - 38 App.).

Down through 1941 petitioners owned no real estate in the District of Columbia. During all of 1941 and into 1942 petitioners while in the District occupied a rented house at 2018 Hillyer Place (being the same house in which they resided while in the District during the calendar years 1939 and 1940) at a monthly rental of \$90. Their lease ran to September 1942, but the owners had given notice they would not renew the lease. (R. Ex. A and Q, at 65 App., 66 App., 86 App., 87 App.).

In January, 1942 petitioners acquired by purchase a dwelling house at 1671 31st Street, N. W., in the District of Columbia. The former owner had been asking approximately \$80,000 for the premises, but the petitioners acquired the property for \$37,500. The contract to buy was dated in December, 1941. (21 App., 28 App.).

Petitioners' Washington dwelling house has a basement with kitchen and service room; first floor with a living room, dining room, pantry with kitchen equipment in it; second floor with a small "office", sitting room, two bedrooms and two baths; third floor with room used for storage, one large bedroom and bath, and two very small bedrooms and a bath. (21 App.). The house is completely and comfortably, although inexpensively furnished for living

purposes. (24 App.). To compare the furnishings in the two houses (Maine and Washington), they are the same sort of furnishings because petitioners have bought very few things for themselves; they have inherited large amounts of pretty good furniture. It would be difficult to put a value on the household furnishings in Maine or in Washington because they are a mixture of antique and Victorian that have been given or handed down to the petitioners; the same sort of furnishings are in both houses. (45 App., 46 App.).

On Cross Examination Mr. Rogers stated that he had been at the petitioners' home in Woolwich, Maine every year from 1921 through 1947, with few exceptions. (41 App.) He also testified that he had been frequently at their house at 1671 - 31st Street in the District of Columbia, that he was familiar with the furnishings at both houses, and in response to the question "now, comparing the house and furnishings in Woolwich . . . and the house and furnishings . . . at 1671 Thirty-first Street in the District, which would you say was more completely appointed, the one in the District or the one in Woolwich?", he replied ". . . I would say that the appointments are complete in both places". (41 App., 42 App.).

SUMMARY OF ARGUMENT

The sole issue is whether or not petitioners were domiciled in the District of Columbia on the 31st day of December in the years 1942, 1943, 1944 and 1945.

The law of domicile is reviewed and set forth for the convenience of the Court.

This Court has held in a previous case that petitioners were domiciled in Woolwich, Maine 1921-1930, and in Cambridge, Massachusetts 1930-1940, and those facts presumably are *res judicata* in the instant case.

Petitioners had the legal capacity to change their Massachusetts domicile and to acquire a different domicile of their choice. There is no rule of law that imposes District of Columbia domicile on them when they indicate an intent to establish a new domicile of choice.

Petitioners have indicated a consistent and unrefuted intent since 1940 to re-establish their permanent home and domicile in Woolwich, Maine, and not in the District of Columbia.

Petitioners changed their domicile from Cambridge, Massachusetts to Woolwich, Maine in 1941, and their domicile in Woolwich, Maine has continued through the years 1942, 1943, 1944 and 1945.

The Board erred in failing to hold that petitioners effected a change of domicile to Woolwich, Maine in 1941, and that their domicile continued to be in Maine, and consequently that they were not domiciled in the District of Columbia on the 31st days of December 1942, 1943, 1944 and 1945.

ARGUMENT

1. The Law of Domicile

The American Law Institute Restatement, Conflicts, states clearly and succinctly the legal aspects of domicile:

Sec. 9. DOMICIL. Domicil is the place with which a person has a settled connection for certain legal purposes, either because his home is there, or because that place is assigned to him by law.

(Under *COMMENT* following that section it is stated "... a person may be a 'resident' or an 'inhabitant' or a 'citizen' of a place without being domiciled therein ... ")

Sec. 12. RELATION BETWEEN DOMICIL AND HOME. ... when a person has one home and only one home, his domicil is the place where his home is.

Sec. 13. HOME DEFINED. A home is a dwelling place of a person, distinguished from other dwelling places of that person by the intimacy of a relation between the person and the place.

Sec. 15. DOMICIL OF CHOICE.

(1) A domicile of choice is a domicile acquired, through the exercise of his own will, by a person who is legally capable of changing his domicile.

(2) To acquire a domicile of choice, a person must establish a dwelling-place with the intention of making it his home.

(3) The fact of physical presence at a dwelling-place and the intention to make it a home must concur; if they do so, even for a moment, the change of domicile takes place.

(4) A person can acquire a domicile of choice only in one of three ways:

- (a) having no home, he acquires a home in a place other than his former domicile;
- (b) having a home in one place, he gives it up as such and acquires a new home in another place;
- (c) having two homes, he comes to regard the one of them not previously his domicile as his principal home.

Sec. 18. REQUISITE OF INTENTION. A person cannot change his domicile by removal to a new dwelling-place without an intention to make the new dwelling-place his home.

Sec. 19. NATURE OF INTENTION REQUIRED. The intention required for the acquisition of a domicile of choice is an intention to make a home in fact, and not an intention to acquire a domicile.

Sec. 20. PRESENT INTENTION. For the acquisition of a domicile of choice the intention to make a home must be an intention to make a home at the moment, not to make a home in the future.

Sec. 22. MOTIVE. The motive with which a person acquires a new dwelling-place does not determine the question of the establishment of a domicile of choice, but it may be important evidence tending to show whether or not, when a new dwelling place is acquired, there is an intention to make a home there.

Sec. 23. CONTINUING QUALITY OF DOMICIL.

A domicile once established continues until it is superseded by a new domicile.

Sec. 24. DOMICIL OF PERSON HAVING TWO HOMES. When a person who has capacity to acquire a domicile of choice has more than one home, his domicile is in the earlier home, unless he regards the second home as his principal home.

The cases consistently support the precepts set forth in the Restatement.

The Supreme Court of the United States in the combined cases of *District of Columbia v. Murphy* and the *District of Columbia v. DeHart*, 314 U. S. 441, reviewed the legislative history of the Tax Act and quoted Senator Overton, Chairman of the Senate Conferees, who said " . . . if we imposed an income tax only on those domiciled within the District, then we would be imposing it only on those who of their own volition had abandoned their domiciles in the states of their origin and had elected to make their permanent home or domicile here in the District of Columbia." (84 Cong. Rec. 8825). The Court also quoted Representative Nichols, Chairman of the House Conferees, who defined the meaning of domicile as " . . . 'the place where one has his true, fixed, and permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning, and where he exercises his political rights . . . There must exist in combination the fact of his residence and animus manendi' — which means residence and his intention to return [sic]; so that under this definition he could certainly live in the District of Columbia and have his legal domicile in any other State in the United States" (84 Cong. Rec. 8974).

The Court thereupon laid down certain broad rules to be applied in determining domicile under the Tax Act; generally, persons coming to the District in Federal employment do not lose their former domicile or acquire domicile in the District simply by coming here for an indefinite

time while in Government service; on the other hand, the Court held "that persons are domiciled here who live here and have no fixed and definite intent to return and make their homes where they were formerly domiciled." In a footnote the Court said "While the intention to return must be fixed, the date need not be; while the intention to return must be unconditional the time may be, and in most cases, of necessity is, contingent. The intention must not waver before the uncertainties of time, but one may not be visited with unwelcome domicile for lacking the gift of prophecy." The Court said all facts which go to show the relations maintained to one's former place of abode are relative in determining domicile such as, what bridges have been kept and what burned; whether the former place of abode has been retained; how permanent was the domicile in the other jurisdiction; were taxes paid in the other jurisdiction because of retention of domicile which could have been avoided by giving it up and were they nominal or substantial. It warned that Congress was concerned lest there be "triple taxation" and this should be taken into consideration, and remanded the case to the Board for further proceedings not inconsistent with the opinion.

In *Sweeney v. District of Columbia*, 72 App. D. C. 30, 113 F. 2d. 25, the question was whether petitioner was subject to the District tax on intangibles for 1938 and 1939, and that involved the question of domicile. Petitioner had been domiciled in Boston in 1918 when he came to the District where he had since resided. He at all times by word and act steadfastly maintained that his permanent home, legal residence and domicile were in Boston and repeatedly declared his intention to return to Boston and that he was residing in the District only temporarily. His only domestic establishment was in Washington and he had no other in Massachusetts or elsewhere. In this case the Court limited its considerations to the status of Federal employees. In reviewing the facts the Court found that the petitioner had done all anyone could do, circumstanced

as he was, to maintain his state domiciliation and held that he was not domiciled in the District of Columbia.

While the Courts in the foregoing cases had under consideration the domicile and consequent tax liability of Federal employees, the general tests and inquiries prescribed therein must apply also to persons not in the Federal employment; and this Court has so applied them in *Beedy v. District of Columbia*, 75 App. D. C. 289, 126 F. 2d 647. On facts quite similar to those in the case at bar this Court recognizes that "Love of home — deep rooted and abiding — beats as surely in the bosom of the private citizen as in the bosom of the public official" and found that on the evidence the appellant who had concededly been a citizen of Maine up to the year 1935, had shown the "fixed and definite intent to return and take up his home there" which the Supreme Court had said in the *Murphy* case was necessary to retain his domicile. This Court found that the Board had erred in concluding that appellant had only a "floating" intention to return and live in Maine, and that, indeed, there was no lack of abiding intention to return to his home in Maine, but a constant purpose to do so, and held that he was domiciled in Maine and not in the District of Columbia.

In *Pace v. District of Columbia*, 77 U. S. App. D. C. 332, 135 F. 2d 249, the question related to the District inheritance tax and involved the question of domicile. The decedent whose domicile of origin was Florida had died in the District of Columbia after residing there for 27 years. The decedent had sold his family homestead in Florida when he left there and had since owned no home or other place of residence in Florida, although his furniture and household goods were stored in a warehouse in that state. He expressed a desire eventually to return to Florida and explained he did not wish to establish his home in the District. He owned a number of business, residential and farm properties in Florida, notes secured by Florida real estate, and had an active bank account in Florida; other

intangible assets he kept with him in the District of Columbia. At all times he was registered and qualified voter in Florida. The Board of Tax Appeals found that the evidence adduced had not shown that the decedent during his residence in the District of Columbia always had a fixed and definite intent to return and take up his home in Florida and hence had not overcome the presumption arising from his maintaining a home in the District that he was domiciled therein. This Court reviewed the facts, particularly the evidence relative to decedent's intent, and held that the petitioner had amply sustained the requisite burden of proof that the decedent maintained his domicile in Florida.

On certiorari the Supreme Court of the United States in *District of Columbia v. Pace*, 88 L. Ed. 319, 320 U. S. 698, reviewed the statute authorizing an appeal to this Court and held that "The Court of Appeals has power to review decisions of the Board of Tax Appeals as under the equity practice in which the whole case, both facts and law, are open for consideration in the Appellate Court, . . ." The Court pointed out that Congress has elected to make liability for income tax in the District dependent upon whether the taxpayer is domiciled in the District on the last day of the year, and said that in the District ". . . a large proportion of the population owe their presence to Government service and have the strongest motives for retaining their political connections with and domicile in the enfranchised community from which they came . . ." and affirmed the decision of this Court.

In *Shilkret v. Helvering*, 138 F. 2d 925, the question related to whether the petitioner had effected a change of domicile from the State of New York to the State of California and whether he was entitled to report income on a community property basis in his Federal Income Tax Return. This Court said at 927, " . . . to effect a change from an old and established domicile to a new one, there must be the absence of any present intention of not resid-

ing in the latter permanently or indefinitely. Or, stated differently there must be a fixed purpose to remain in the new location permanently or indefinitely. For a domicile once acquired is presumed to continue until it is shown to have been changed, and to show the change two things are indispensable — 'First, residence in the new locality; and, second, the intention to remain there. The change cannot be made except *facto et animo*. Both are alike necessary. Either without the other is insufficient. Mere absence from a fixed home, however long continued, cannot work the change. There must be the *animus* to change the prior domicile or another. Until the new one is acquired, the old one remains. These principles are axiomatic in the law upon the subject.' " On a review of the undisputed facts, from which it appeared that although petitioner had spent the major parts of several years in California, nevertheless he never had the intent to make California his permanent home, but always intended to return to New York, this Court held that the petitioner had not effected a change of domicile from New York to California.

In *Collier v. District of Columbia*, 161 F. 2d 649, the petitioner had testified that under the laws of New Hampshire [as in the instant case under the laws of Maine] the only tax applicable to him as a domiciliary of New Hampshire was the poll tax, which he had paid. Upon a review of all the facts, this Court held that petitioner was not domiciled in the District of Columbia and said *inter alia* ". . . . while the intention to return must be fixed, the date need not be; while the intention to return must be unconditional, the time may be, and in most cases of necessity is, contingent. The intention must not waver before the uncertainties of time, but one may not be visited with unwelcome domicile for lacking the gift of prophesy."

In *Beckham v. District of Columbia*, 163 F. 2d 701, (certiorari denied, 68 Sup. Ct. 263; petition for rehearing denied December 15, 1947) the petitioner had been a domi-

ciliary of Texas for many years, had come to the District of Columbia in or about 1928, and although he had paid all his Federal taxes in Texas, and Texas Poll Tax until he was exempted therefrom on account of age, and had voted in every general election in Texas, he had not returned to Texas since coming to the District in 1928. He stated that he intended to return to Texas when he should be separated ~~in~~^{from} the service in the District but was frank to admit that if he were offered a satisfactory position in the District upon such separation, or if he should not be separated until an advanced age, he might remain in the District. This Court, in holding that the petitioner was domiciled in Texas, said "we think these conditional answers to hypothetical questions constitute no substantial evidence that the Beckhams have not had during the period of their residence in the District a fixed intention at the end of Mr. Beckham's Government Service to return to their previous abode in Texas. It is the fixed intention that is controlling under the ruling in the *Collier* case. Any honest witness . . . testifying to a fixed intention to return to a former abode at the end of Government Service would be bound to admit, if questioned, that he might remain in the District if at some future time it was made substantially to his advantage to do so; or that if he were to reach an advanced age before his Government Service ended he might not depart."

In *Gilbert v. David*, 235 U. S. 561, the Court at page 569 cited Dicey and said " . . . change of domicile is said to arise where there is a change of abode and 'the absence of any present intention to not reside permanently or indefinitely in the new abode.' Or, as Judge Storey puts it . . . 'if a person has actually removed to another place, with the intention of remaining there for an indefinite time, and as a place of fixed present domicile, it is to be deemed his place of domicile, notwithstanding he may entertain a floating intention to return at some future period' 'the requisite animus is the present intention of permanent

or indefinite residence in a given place or country, or, negatively expressed, the absence of any present intention of not residing there permanently or indefinitely' *Price v. Price*, 156 Pa. 617, 626."

In *Texas v. Florida*, 306 U. S. 398 (1939) the Supreme Court reviewed the facts, cited with approval *Gilbert v. David*, (Supra) and the Restatement regarding domicile and rendered an opinion supporting the precepts of the Restatement.

Matter of Newcomb, decided in 1908 by the Court of Appeals, 192 N. Y. 238, is a leading New York case, and is currently cited with approval. At page 250 the Court said . . . "As domicile and residence are usually in the same place, they are frequently used, even in our statutes, as if they had the same meaning, but they are not identical terms, for a person may have two places of residence, as in the city and country, but only one domicile. Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intent to make it one's domicile." Again, "The existing domicile, whether of origin or selection, continues until a new one is acquired In order to acquire a new domicile there must be a union of residence and intention. Residence without intention, or intention without residence is of no avail. Mere change of residence although continued for a long time does not effect a change of domicile, while a change of residence even for a short time with the intention in good faith to change the domicile, has that effect. . . . Residence is . . . not controlling, for unless combined with intention it cannot effect a change of domicile." The Court further states in regard to domicile "The subject is under the absolute control of every person of full age and sound mind who is free from restraint . . . Motives are

immaterial, except as they indicate intention. A change of domicile may be made through caprice, whim or fancy, for business, health or pleasure, to secure a change of climate, or a change of laws, or for any reason whatsoever, provided there is an absolute and fixed intention to abandon one and acquire another, and the acts of the person affected confirm the intention . . . A temporary residence for a temporary purpose, with the intent to return to the old home when the purpose has been accomplished, leaves the domicile unchanged." In regard to the free choice of the individual the Court said "Intention may be proved by acts and by declarations connected with acts, but it is not thus limited when it relates to mental attitude or to a subject governed by choice . . . a person may select and make his own domicile and no one may let or hinder. He may elect between his winter and summer residence and make a domicile of either. The right to choose implies the right to declare one's choice, formally or informally as he prefers, and even for the sole purpose of making evidence to prove what his choice was. Such declarations are not self-serving in an improper sense, unless they are made with the intent to deceive." In the *Newcomb* case the New ~~Orleans~~^{York} Court held the deceased died domiciled in New Orleans.

For a case involving domicile, and supporting the principles laid down in the Restatement and in the Supreme Court decisions, see *Bourne's Estate*, Surrogate's Court, Westchester County, New York, 41 N. Y. Supp. 2d 336, which reviews the facts and holds a domicile once established continues until superseded by a new one in fact; that a change cannot be effected by a mere formal declaration but must be accompanied by facts and intentions sufficient to sustain a contention of change of domicile. The Surrogate said at 343 "Although the law may not question motives for desiring to effect a change of domicile, except as they may indicate intention . . . it does demand that the intent be manifested by unequivocal acts" and held

on all the facts the deceased had not effected a change of domicile.

In *Benjamin's Estate*, New York Surrogate's Court, 27 N. Y. Supp. 2d 963, Surrogate Foley said "Concepts of the law of domicile have in recent years been somewhat changed by the leading authorities of our State and the United States Supreme Court. The trend has been away from the former policy of attributing controlling weight to the formal declarations of a deceased as indicating his choice. More regard is now given to the test of whether the place of habitation is the permanent home of a person, with the range of sentiment, feeling and permanent association with it." And again, "The acquisition of a new domicile involves an intent to abandon the old dwelling place as a home."

The question of change of domicile was considered in *Johnson's Will*, 259 App. Div. (N. Y.) 290 in which the Court said at 291 "In order to effect a change there must have been proof that the deceased had freely chosen another domicile and that his choice was followed by physical presence at a dwelling place and the intention to make it a home. There must be a concurrence of the fact and the intent, the *factum* and the *animus*."

Beale in Conflict of Laws, Chapter on Domicile, Sec. 24.3 says:

"The true criterion, therefore, for determining domicile when there are two homes, seems to be the determination of the order of acquisition of the two homes. The one which having been first acquired becomes a domicile remains the domicile in spite of the establishment of a new home; and the second home therefore cannot be a legal domicile so long as the first one remains an actual home. This appears to be the doctrine applied, though not always clearly expressed, in most of the cases; therefore, where one has a home and domicile established, and thereafter acquires a new residence, still maintaining his old home, it is

not material whether the new residence is or is not his home, if it does not become his principal home; for whether a residence merely or a home, domicile continues to be where it was in the past."

And in Sec. ¹⁵¹~~161~~ he says:

"The determination of a domicile of choice involves the determination of questions of fact and particularly of the fact of intention, always a difficult fact to determine. The difficulty, however, it must be emphasized is one of fact and not of law, the legal principle being clear."

The Court in *Dorrance Estate*, 309 Pa. 151 said:

"Nor do we mean that when a man has two actual residences, either one of which might be his domicile, he is not free to choose between them."

2. This Court Has Held These Petitioners Were Domiciled in Maine 1921-1930 and in Massachusetts 1930-1940.

On the record it is clear that petitioners established their domicile in Woolwich, Maine in 1921 and that such domicile continued until 1930. This Court and the Board of Tax Appeals both so found in the previous case. (*Butler v. District of Columbia*, 153 F. 2d 617, 619; BTA DC, No. 734.)

In the previous case these petitioners contended in the alternative that (1) they never changed their domicile and consequently that it continued to be in Woolwich, Maine, or (2) if they changed their domicile from Woolwich, Maine to Cambridge, Massachusetts nevertheless they had changed it back to Woolwich, Maine prior to the years involved in that case (1939 and 1940), or (3) if they changed their domicile from Woolwich, Maine to Cambridge, Massachusetts and had not changed it back to Woolwich, Maine, then it continued through the calendar years 1939 and 1940 to be in Cambridge, Massachusetts, and (4) in no event had they established their domicile

in the District of Columbia at any time (R. Ex. X, with original Exhibits, not printed in Joint Appendix).

On the same facts as appear in the instant case, which had occurred up to and including December 31, 1940, and with many of the same subsequent facts evidencing re-establishment in 1941 of petitioners' Maine domicile and consequent termination of their Massachusetts domicile, this Court agreed with the finding of the Board that in 1930 petitioners had changed their domicile from Maine to Massachusetts, but differed from the Board which held that in 1934 (when petitioners had terminated the lease on their dwelling in Cambridge and had come to Washington) they had abandoned their Massachusetts domicile, and instead found that such Massachusetts domicile continued through December 31, 1940. However, the Court expressly limited its finding of Massachusetts domicile to the years 1939 and 1940. (*Butler v. District of Columbia, supra*, at 618).

Therefore, it appears to be *res judicata* that petitioners were domiciled in Woolwich, Maine 1921-1930, and in Cambridge, Massachusetts 1930-1940, but expressly left undetermined where they have been domiciled since December 31, 1940.

3. These Petitioners Had the Legal Capacity to Change Their Domicile and Acquire a Different Domicile of Their Own Choice.

These petitioners have not been shown to be under any disability to prevent them from acting in accordance with their own choice in such a matter, and therefore they have the legal capacity to change their domicile and acquire a different domicile of their choice. This would seem to be axiomatic and require no argument.

- However, the Board appears to have held otherwise, because after a fairly extensive finding of facts, including the fact that at various times in 1941 petitioners were living at their home in Woolwich which they had owned since 1926,

and that petitioners did not at any time during 1942, 1943, 1944 or 1945 intend to return to Massachusetts and resume their former home in that State, clearly pointing to a change of domicile of choice by the petitioners from Massachusetts to Maine in 1941, but without any finding that petitioners at any time had any desire, purpose or intention of establishing their permanent home and consequent domicile at their rented premises at 2018 Hillyer Place where they were living while in Washington in 1941, or at any other place in the District of Columbia, it finds that they "have not established domicile in Maine during any part of the years 1942, 1943, 1944 or 1945", but that "on the 31st day of December, 1942, 1943, 1944 and 1945, petitioners were domiciled in the District of Columbia."

In the Memorandum filed with the Findings of Fact, Conclusions of Law, and Decision, the Board states "petitioners have not contended or offered any evidence in this proceeding tending to show any intent to return to Massachusetts, and therefore their Massachusetts domicile has been abandoned." (107 App) Then, quoting from *District of Columbia v. Murphy* (314 U. S. 441, 454) that "... persons are domiciled here [in the District] who live here and have no fixed and definite intent to return and make their home where they were formerly domiciled," the Board adds "The phrase 'formerly domiciled' undoubtedly refers to domicile immediately prior to coming to the District, in this case Massachusetts, and not to a domicile anterior to that (Maine)", and decides, apparently as a conclusion of law in disregard of uncontroverted and unrebutted evidence to the contrary, that petitioners became domiciled in the District of Columbia. (107-108 App.)

The Board also apparently construes the pronouncement of the Court in the *Murphy* case that the place where a man lives is properly taken as his domicile until facts adduced establish the contrary, as a conclusive rule of the law of domicile rather than a local rule placing the burden of

proof on the taxpayer instead of on the District taxing authorities.

These findings, conclusions and memoranda indicate that in the opinion of the Board these petitioners had no choice in the matter, but that as a result of their lack of intent to return to Massachusetts their prior Massachusetts domicile necessarily was forthwith abandoned, and that upon such abandonment, they lacked the legal capacity to re-establish their former Maine domicile (or any other domicile of choice), but necessarily became domiciled (apparently by operation of law) in the District of Columbia.

Such conclusions are fraught with error:

(1) They assume that if a person does not intend to return to the place of his former domicile he thereby loses his former domicile and becomes domiciled in the place where he happens to be residing at the moment, without any choice in the matter. Such is not the law; to effect such change "there must be the animus to exchange the prior domicile for another. Until the new one is acquired the old one remains." (*Butler v. District of Columbia*, *supra*, at 620.) "A domicile once established continues until it is superseded by a new domicile." (American Law Institute Restatement, Conflicts, Sec. 23).

(2) They add an unwarranted restriction to the language of the Supreme Court of the United States in *District of Columbia v. Murphy* in construing the words "formerly domiciled" as *necessarily* referring to the domicile *immediately* prior to coming to the District.

(3) They construe a rule in the *Murphy* case relating to burden of proof in District of Columbia tax procedure as a conclusive rule of the law of domicile.

(4) They ignore the requisite of intent which is inherent in the establishment of a domicile of choice. A person cannot change his domicile by removal to a new dwelling without an intention to make the new dwelling place his home. (*Op. cit.*, Sec. 18).

(5) They ignore the fact that petitioners were "living" at their home in Woolwich in 1941, and each other year here involved, just as surely as they were "living" in Washington during those years.

(6) They wholly ignore the uncontroverted, and indeed unquestioned, intent of the petitioners to re-establish their permanent home and domicile in Woolwich, Maine and conversely not to establish their permanent home and domicile in the District of Columbia; facts which are controlling in the establishment of a domicile of choice.

4. Petitioners Changed Their Domicile From Cambridge, Massachusetts to Woolwich, Maine.

Applying the general law of domicile, as well as the holding of this Court in the previous case, to the facts of this case as they appear in the record, it is clear that petitioners were domiciled in Woolwich, Maine from 1921 to 1930.

This Court found that from 1930 to 1934 petitioners were inhabitants of Massachusetts and that although in 1934 they gave up their leased house in that State (after which they had no actual place of residence in Massachusetts) and came to Washington so that Henry F. Butler might practice law there with his father, nevertheless from year to year through 1940 he made regular returns of his taxable income, invariably signifying that he was an inhabitant of Massachusetts, and that petitioners continued to be registered voters in Cambridge, Massachusetts and to exercise their voting privileges in that State through 1940, and held they were domiciled in Massachusetts on the 31st days of December 1939 and 1940. (*Butler v. District of Columbia, supra*).

With that as the point of departure, petitioners contend that they changed their domicile from Massachusetts back to Maine on the first occasion in 1941 that they were at their home in Woolwich, Maine. At that time, as well as

on all subsequent occasions when petitioners have been at their home in Woolwich, Maine, there has been the concurrence of their physical presence and their intention to make their dwelling in Woolwich their permanent home, which establishes the fact of domicile.

The evidence of the concurrence of physical presence at Woolwich and intent of the petitioners to make it their permanent home and domicile is overwhelming and wholly uncontroverted.

When petitioner Henry F. Butler wrote to the Selectmen of the Town of Woolwich on December 16, 1940 that he and his wife desired again to be domiciliaries of, and registered as voters in the Town, eligible to vote commencing in 1941, he clearly indicated the desire and intent of himself and his wife to re-establish their permanent home, legal voting residence and domicile in Woolwich in 1941. When that was written in 1940 it was an expression of future intent relating to 1941 and could not, *per se*, effect a change of domicile, but it plotted the course to which these petitioners have adhered without deviation from the beginning of 1941 to the present.

Now let us see what occurred in the year 1941 evidencing a change of domicile. Petitioners were in Woolwich on at least four different occasions in 1941, in May, July, August and November, aggregating about 2 months' time. (8 App., R. Ex. A at 66 App. and 75 App.). When in Woolwich petitioners were occupying the only dwelling house which they owned anywhere in 1941; it was the same house which they had owned since 1926, which had been their domicile from 1926 to 1930, and their permanent home down to the present. Woolwich had been their domicile of choice from 1921 to 1930, and they have owned real estate there continuously from 1921 to the present. (6 App., 7 App., R. Ex. A at 66 App. and 73 App.; R. Ex. Q at 90 App.). Petitioners were "living" in Woolwich in 1941 just as definitely as they also were "living" in Washington that year.

— and no less so — although admittedly for a shorter period of time.

Petitioners' home in Woolwich is a very old, commodious house, adequate for year-around occupancy, fully furnished, mostly in antique colonial, and completely appointed for comfortable, normal living. In 1941 they undertook a program of renovating that house including rebuilding the cellar, installing an oil burner hot air furnace, painting within and without and reshingling at a cost of approximately \$3,500, to make their house even more comfortable as their permanent home. (10 App., 37 App., 38 App., 44 App., R. Ex. A at 74 App. and 75 App.).

The State of Maine may be a so-called "summer resort state", but Woolwich is a farming community with very few "summer people" in it; most persons there are permanent residents. Petitioners were in Woolwich in May and November of 1941 as well as in the summer months of July and August. (8 App., 46 App.; R. Ex. A at 75 App.). It needs no argument to point out that one does not travel approximately 600 miles (i. e. the distance between Washington and Woolwich) in May and November for summer resort purposes, though one would make such trips to return to his home.

Furthermore, when one is living part of the time away from his permanent home, it is entirely normal for him to go home for vacations. The fact that Maine is a pleasant State in the summer months when one working in Washington usually tries to take a vacation does not prevent Woolwich from being petitioners' home and domicile. (20 App.).

In about August, 1941, petitioners purchased a used automobile in Boston, took it to Maine and registered it there. (9 App.). Simultaneously Henry F. Butler obtained a Maine Operator's License although he already had a District of Columbia operator's license. A Maine operator's license was necessary for an inhabitant of that State, but not for a person who was not an inhabitant (and

who had an operator's license from some other State.) Petitioner gave his address as Woolwich (Post Office; Wiscasset) Maine. (9 App., 10 App., 24 App., 25 App., P. Ex. 9 at 60 App.).

On August 25, 1941 petitioner paid without protest the tax assessed to him by the Town of Woolwich, Maine, including a poll tax levied only against inhabitants (voting residents) of the Town, because he considered himself domiciled there. (8 App., 9 App., P. Ex. 2 at 58 App.-2).

That petitioners unequivocally evidenced to others their change of domicile in 1941 from Massachusetts back to Woolwich, Maine, and that others recognized re-establishment of their domicile in Woolwich in 1941 is clearly shown by:—

1. Affidavit of the Town Clerk for the Town of Woolwich that these petitioners have been personally known to him for some period of years and that his official town records show they have been registered voters in the Town of Woolwich from 1941 to 1947, inclusive, and have paid automobile tax during those years. (P. Ex. 3 at 59 App, 60 App.).

2. Affidavit of the Tax Collector for the Town of Woolwich that the tax records show these petitioners have paid all taxes, real, personal (tangible and intangible) and poll for which they have been assessed as voting residents of the town of Woolwich from 1941 through 1947, inclusive; that he is acquainted with petitioners and knows that they have voting residence in the town of Woolwich during those years. (P. Ex. 4 at 60 App., 61 App.).

3. Letter from the Administrator of the Income Tax Division of the District of Columbia Government to Henry F. Butler dated April 16, 1942 advising that petitioners have established their claim of domicile outside the District of Columbia, and returning checks which had been tendered in payment under protest. (P. Ex. 14 at 61 App,

62 App.). This finding was predicated on petitioner's claim for refund in which Henry F. Butler alleged domicile in Woolwich, Maine and stated, *inter alia*, "Prior to January 1, 1941 I was a registered voter in the Commonwealth of Massachusetts; however, I effected a change of legal residence to Woolwich, Maine, and as appears in the official records of the town of Woolwich, I became a registered voter there on January 1, 1941." (R. Ex. A at 70 App.). Furthermore that finding was never cancelled although it was the subject of discussion on or before September 29, 1942 between Mr. Dunham of the Tax Administrator's office and Mr. Simmon, Corporation Counsel for the District in the previous case of *Butler v. District of Columbia*. (54 App-57 App; R. Ex. Y at 98 App).

4. Certificate of the Supreme Judicial Court of the State of Maine, March Term, 1943, of admission of Henry F. Butler as an attorney and counsellor in the Judicial Courts of that State, eligible to practice in all courts of that state. (P. Ex. 15 at 62 App.). This admission was on motion, the petitioner claiming legal residence in Maine. (11 App.).

At all times that petitioners were living at their home in Maine, in May, July, August and November, 1941 they did not own or have a contract to purchase a dwelling house in the District of Columbia, but while in the District occupied rented premises at 2018 Hillyer Place N.W. They did not own real estate in the District until 1942, though they had entered into a contract to purchase the residence at 1671 31st Street N.W. in December 1941. (21 App., R. Ex. A at 66 App, R. Ex. Q at 86 App.).

Petitioners' own statements of domicile in Woolwich, Maine at all times during and since 1941 have been consistent and unwavering, as have been their statements of intention not to establish a permanent home and domicile in the District of Columbia. This Court already is aware of these statements of intent from the previous case.

There has been no deviation from that intent. (12 App. See Tax Returns, claims for refund, etc.).

The acts of petitioners in subsequent years confirm the re-establishment of their domicile in Woolwich, Maine in 1941 and its retention there through the years 1942, 1943, 1944, 1945 and to date. They attended Woolwich Town Meeting in March, 1942 (11 App.); Henry F. Butler attended Town Meeting in 1943 (11 App.); they have voted in all State and National elections since 1941 in Woolwich, usually in person, (51 App; R. Ex. A at 57 App; R. Ex. Q at 88 App.); they filed no income tax returns and paid no taxes in Massachusetts for any year subsequent to 1941, (R. Exs. R and S at 95 App, 96 App.); they continued to register their automobile in Maine and although Henry F. Butler also had a District of Columbia operator's permit, he continued to obtain Maine operator's license in each subsequent year (9 App, 10 App; P. Exs. 9-14 at 60 App. 5 and with original exhibits, not printed in Joint Appendix); they have returned to their home several times during each of the years 1942, 1943 and 1944, though probably only once in 1945, in which year they also went to South America, (9 App-12 App). This Court will take judicial notice of the fact that during the years 1942-1945 persons were requested not to travel by car or by train more than was reasonably necessary, and will recognize that curtailment of their returns to their home in Maine and the amount of time they lived there each year was not evidence of petitioners' abandonment of their domicile there, but only compliance with restrictions geared to the war situation.

The State of Maine does not impose an income tax on its inhabitants. The State requires towns to assess a poll tax to all male inhabitants, unless specifically exempted, and a personal property tax on automobiles in the town where the owner lives as a prerequisite to registration; it authorizes, but does not require, towns to include in the valuation of taxable property certain specific items of tangible

personal property located in the towns, and intangible personal property belonging to inhabitants of the several towns.

The Town of Woolwich includes typically rural tangible property, but does not assess intangibles. Petitioners did not own in Woolwich during the years 1941-1945, inclusive, any of the classified items of tangible personal property, except an automobile. (15 App, 39 App, P. Ex. 26 at 114 App.-116 App). Therefore payment each year by petitioners to the Town of Woolwich of the poll tax and the automobile tax constituted full payment by them of all taxes to which they were liable as domiciliaries of the town of Woolwich. Of course they paid real estate taxes in the towns of Woolwich and of Westport where they owned real estate, but none of the domiciliary taxes in Westport. The reasonableness of not including intangibles in the valuation of taxable property is more apparent when it is remembered that the rate of taxation in Woolwich was in 1941, \$57 per \$1000; in 1942, \$51 per \$1000; in 1943, \$46 per \$1000; in 1944, \$56 per \$1000; and in 1945, \$63 per \$1000. (8 App, 9 App; P. Exs. 2, 5, 6, 7, 8 at 58 App-1, 58 App-2, 60 App-1, 60 App-2, 60 App-3, 60 App-4).

As appears from the Annual Report of the Assessors of the town of Woolwich for the year ending February 15, 1944 (P. Ex. 26 at 114 App-116 App) valuations are all exceedingly low — for example, horses at an average of about \$84, cows at \$21 each, sheep at a little over \$4 each. Intangibles cannot be valued so arbitrarily, and if included at their actual value, the tax rate would be confiscatory.

Petitioners have expressed their clear and unequivocal intent to re-establish and maintain their permanent home in Woolwich, Maine, and to return to it whenever possible from wherever else they may be. While they have refused to state any specific time when they expect to wholly leave Washington and physically reside permanently in Woolwich, they have given straightforward statements of in-

tent to establish and maintain their domicile in Woolwich. This Court surely will consider the substance of petitioners' statements, and will not penalize them for their refusal to give statements more definite as to time, which all parties would realize were mere conjecture at best. The statements are necessarily indefinite as to details, but unwavering as to intent.

Henry F. Butler testified before the Board that it has been his consistent intent and purpose to re-establish his permanent home, voting residence, domicile in Woolwich, Maine, and not to establish a permanent home in the District of Columbia; that he does not dislike Washington, but prefers to have his home and domicile where he can vote and have national representation; that he hesitates to say when he expects to return to Maine "permanently" as he would never want to be any place twelve months a year; that his permanent home is in Maine and he periodically returns to his home there; that he expects to make his residence in Washington less as the years go on, but hopes he always will be able to come to Washington occasionally. (16 App., 17 App., 20 App.).

Petitioner admits that during the years 1941-1945 inclusive (and to the present) he has spent more than seven months each year in the District, and has been in the District a part or all of nearly every calendar month. However he has been outside the District on many occasions other than when he has returned to his home in Maine. (19 App., 22 App.).

Petitioner said it was impossible to answer the question "When do you expect to pull up stakes in the District of Columbia, get rid of your law practice and your home here, and go back to Woolwich and live, physically reside there permanently?" He said he maintains his home in Woolwich, and goes there the same as anybody goes to any home of his own; that he hopes he never has to give up his practice, wherever it may be, and that he would expect to

continue to have a Federal practice no matter where he might be; that he returns to Maine whenever he gets a chance for business or pleasure, and from now on will do so more and more. (33 App., 34 App.).

These statements clearly indicate the intention of the petitioners to establish and maintain their permanent home and domicile in Maine, and not in the District. These statements are fully supported by the facts adduced in evidence, and wholly unrefuted. The motive is immaterial, though it may throw light on, and emphasize the intent. The *bona fides* of these statements is obvious and they are entitled to full weight in the determination of this case.

It is clear petitioners re-established their domicile in Woolwich, Maine in 1941. Nothing has been adduced to show, and the Board does not find, a change of domicile from Woolwich to the District of Columbia at any time since 1941. Therefore petitioners were domiciled in Maine during all of the years 1942, 1943, 1944 and 1945.

5. The Board Erred

The Board erred in failing to find on the facts as they appear in the record that petitioners re-established their domicile in Woolwich, Maine in 1941, and that nothing subsequently occurred to alter that situation, so that in 1942, 1943, 1944 and 1945 they continued to be domiciled in Maine and not in the District of Columbia.

The Board apparently has placed great weight on the fact that petitioners did not pay any personal property taxes in Maine except on the automobile they kept there. It ignores the fact that they did not own the classes of tangible personal property taxed in the Town of Woolwich, and that Woolwich does not include intangible personal property in assessing taxes, and that petitioners paid *all* taxes for which they were assessed (or assessable) as domiciliaries of Woolwich in 1941 through 1945.

The Board confuses *intent to make a place a permanent home* with *residing permanently at the place which is one's home*. It is quite true that it is the *present intent* to make a place one's home that establishes domicile, not the intent to make such place one's home in the future. The letter written by Henry F. Butler to the Selectmen of Woolwich in 1940 expressing the intent to make Woolwich his home, voting residence and domicile commencing in 1941 was an expression of future intent and did not *per se* effect a change of domicile in 1940 or at any other time. However, when petitioners were in Woolwich in 1941, with the requisite intent, they *eo instante* re-established their permanent home and domicile in Woolwich. There is no rule of law that requires a person to live permanently at his domicile, or to spend more time there than at some other place. The real test is the permanence of the home, not the amount of time spent there.

These petitioners have strong and deep-rooted ties with their home in Woolwich, which perhaps persons who have lived in city apartments never have experienced, and cannot fully understand. But such ties exist, and even although on account of war restrictions which affected everyone petitioners were able to spend less time in Woolwich than they would have preferred during the years 1941-1945, nevertheless they lived there whenever possible during those years, and they had and still have their permanent home there, and not in the District, and the Board erred in not recognizing that their domicile was in Woolwich during those years and not in the District.

The Board, in construing petitioners' sojourns in Maine as "visits . . . for recreation or business purposes, with the intent to return to the District after the accomplishment of those purposes" (109 App.) appears to overlook the fact that when in the District petitioners had the intent to return to their home in Maine when the business purpose of each current sojourn in Washington should have been accomplished, and the all-important intent ultimately to spend little if any time in the District and to live most of the time at their permanent home in Woolwich, Maine.

CONCLUSION

Petitioners have sustained the burden of proof to show that they re-established their domicile in Woolwich, Maine in 1941, and that they were not domiciled in the District of Columbia on the 31st days of December 1942, 1943, 1944 or 1945, wherefore the decision of the Board of Tax Appeals should be reversed.

Respectfully submitted,

HENRY F. BUTLER

Attorney for Petitioners.

BRIEF FOR RESPONDENT

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,243

HENRY F. BUTLER AND ESTELLE K. BUTLER, *Petitioners,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

ON PETITION FOR REVIEW OF DECISION OF THE BOARD OF TAX
APPEALS FOR THE DISTRICT OF COLUMBIA

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DIVISION OF PRINTING AND PUBLICATIONS—GOVERNMENT OF THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia
Circuit

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BRIEF FOR RESPONDENT

COUNTER STATEMENT OF THE CASE

In *Butler v. District of Columbia*, 80 U. S. App. D. C. 310, 153 F. 2d 617, this Court decided that petitioners herein changed their domicile from Maine to Massachusetts and that, based upon the undisputed evidence in that case, their established domicile in Massachusetts continued to and including the year 1940. Petitioners have conceded (Pet. Br., p. 29) that such decision is *res judicata* as to the years there involved.

The question presented in this case is whether petitioners were domiciled in the District of Columbia on December 31, 1942 to 1945, inclusive, and therefore liable for District of Columbia income taxes for those years (App. 2, 3).

The material facts are contained in the findings of fact of the Board of Tax Appeals (App. 100-106) and are not in dispute.¹ Therefore, a repetition of such facts and comment upon petitioners' alleged "STATEMENT OF THE FACTS" in their brief (pp. 6-16) are deemed unnecessary. The Board of Tax Appeals stated in its memorandum (App. 108):

"The only new features present in this proceeding that were not present in the prior proceeding, were the continuance of petitioners' visits to Maine after 1940, which were of the same general nature as those before and during that year; the admission of Henry Butler to the Maine Bar; his acquisition of a used automobile for \$300, and the keeping and registration of it in the State of Maine; the issuance to Henry Butler of automobile operator's licenses for each of the years here involved; the renovating of the Woolwich house at a cost of \$2900; petitioners' registration as voters in Maine throughout the period 1942 to 1945, inclusive; their attendance at Town Meeting in Woolwich in March, 1942; their discontinuance of payment of Massachusetts income taxes; and Henry Butler's payment of poll taxes in Maine of \$3 per year.²

"Petitioners did not pay any taxes on personal property in Maine except on the automobile that

¹ It will be noted that petitioners alleged in their statement of points on review filed in this case that the Board erred in finding as facts that petitioners were domiciled in the District of Columbia rather than in Maine on the tax dates (Tr. 341). Such findings, however, are ultimate findings based upon findings as to the material facts. Petitioners have not included a statement of points in their brief.

² The "Woolwich house" referred to "is a two-story frame house about 250 years old." Petitioners' real property in Woolwich, including such house, was assessed at \$2960.00 for taxation for each of the years involved (App. 103).

was kept there. On the other hand, in 1941 they purchased a house in the District at a cost of \$37,000, furnished it, and have occupied it ever since. In the same year Henry Butler bought a new automobile for \$1300, which he has kept and registered in the District of Columbia, and he has had a District of Columbia automobile operator's permit since that time."

The Board of Tax Appeals also pointed out (App. 107):

"Petitioners have not contended or offered any evidence in this proceeding tending to show any intent to return to Massachusetts, and therefore their Massachusetts domicile has been abandoned."

The Board of Tax Appeals made ultimate findings of fact, based upon its findings as to the material facts, that (1) petitioners have not at any time during the tax years involved intended to return to Massachusetts and resume their former home in that State; (2) that petitioners have not established domicile in Maine during any part of those years; and (3) that on the 31st days of December of the tax years involved petitioners were domiciled in the District of Columbia (App. 106). The Board concluded as a matter of law that petitioners were liable for District of Columbia income taxes for the tax years involved, affirmed the action of the Assessor, and entered a decision accordingly (App. 106, 110).

SUMMARY OF ARGUMENT

Petitioners, admittedly, since prior to any of the tax dates involved, have not had any intention of returning to Cambridge, Mass., where they were formerly domiciled, and making their home there. Consequently, under the applicable decision of the Supreme Court, such domicile was abandoned prior to any of the tax dates. With one exception in 1945 when petitioners went

to South America, petitioners lived in their home in the District of Columbia during every month of the tax years involved. If petitioners are to succeed in escaping the District income taxes assessed, they must therefore have proved that they, according to the requirements of law, established domicile in Woolwich, Maine, during the year 1941.

In 1941 petitioners acquired a very substantial and permanent home in the District. The action taken by them by letter dated December 16, 1940, to re-establish voting privileges and domicile in Woolwich was nullified by this Court's decision in the prior case involving these petitioners. All self-serving declarations of petitioners, claiming re-establishment of their domicile in Woolwich, Maine, up to trial of this case before the Board of Tax Appeals, have been based upon the action taken by petitioners through the December 16, 1940, letter. Their Maine voting status is based upon such letter.

Petitioners now contend in this Court, however, that they re-established domicile in Woolwich, Maine, on their first visit to that place in May, 1941. The purpose of the May, 1941, visit to Woolwich, as well as all subsequent visits to that place, was for business or pleasure. When such visits were made petitioners, as shown by their conduct, always had the intention to return to their home in the District of Columbia. The District of Columbia home was the principal home of petitioners, and consequently their domicile, under the decisions of the Supreme Court. Petitioners' self-serving statements to the contrary are not controlling.

ARGUMENT

I

Petitioners have abandoned their Massachusetts domicile.

The Board found as facts (App. 100, Finding 1) that petitioners moved to the District in 1934; that since that time Henry F. Butler has continuously practiced law, and both petitioners have resided in the District. The Board

also found that during each of the years from 1934 through 1945 "petitioners have returned periodically to their house in Woolwich, Maine." As to the tax years involved, the Board also found (App. 104, Finding 11) that, with one exception in 1945 when petitioners went to South America, there has not been any month in which they have not been in the District; that in December, 1941 they bought a dwelling in the District at a cost of \$37,000, which transaction was closed in January, 1942, and that petitioners have lived there ever since.

In *District of Columbia v. Murphy*, 314 U. S. 441, 86 L. Ed. 329, 62 S. Ct. 303, the Supreme Court placed the burden of proof upon the individual, living in the District on tax day, to establish domicile elsewhere if he is to escape the tax under the District income tax statute here involved. The Board pointed out (App. 107) that petitioners have not offered any evidence tending to show any intent to return to Massachusetts and concluded, therefore, that their Massachusetts domicile had been abandoned, thus bringing the case within the rule of the *Murphy* case holding that persons are domiciled in the District who live here and have no *fixed and definite intent* to return and make their home where they were formerly domiciled.

It is clear from petitioners' brief filed in this Court that they abandoned their Massachusetts domicile prior to any of the tax years involved. Petitioners state (Pet. Br., p. 17) that they have "indicated a consistent and unrefuted intent since 1940 to re-establish their permanent home and domicile in Woolwich, Maine".

II

Petitioners were domiciled in the District of Columbia on the last day of the tax years involved.

Petitioners stated under oath in their petition filed with the Board that they did not have a permanent home in the

District (App. 3), whereas they did in fact have a very substantial and permanent home in the District which they bought in 1941 prior to any of the tax years involved, and in which they were living at the time said petition was executed and filed (App. 104, Finding 11).

The petitioners rely almost entirely upon their statements of intent referred to in their brief and then urge to this Court the conclusion that such "statements are necessarily indefinite as to details, but unwavering as to intent" (Pet. Br., p. 39). We submit that petitioners' statements under oath and in their brief require an opposite conclusion as will hereinafter appear.

In a letter dated December 16, 1940 to The Selectmen of the Town of Woolwich, Maine, Henry F. Butler expressed the intent and desire of himself and wife to be registered as residents, domiciliaries and voters in the Town of Woolwich, Maine (App. 58, 100; Pet. Br., p. 6). This was done prior to the end of that year (App. 59). In an affidavit executed July 21, 1943 by said Henry F. Butler in support of his claim for refund of District of Columbia income taxes for the years 1939 and 1940 Mr. Butler stated, having reference to the aforesaid action taken by him in 1940:

"* * * Also in 1940 I made formal application to the Town of Woolwich to again register me as a voter, commencing January 1, 1941, and this was granted as I had complied with all residence requirements." (App. 80)

"On January 1, 1941, our voting registration was changed from Cambridge, Massachusetts, to Woolwich, Maine. The requirements regarding actual residence in Woolwich prior to such registration having been fulfilled." (App. 83)

"* * * If it could be contended that there was a change of domicile to Massachusetts, then that domicile was either returned to Maine in 1934 when we actually returned from Cambridge, Massachusetts, to Woodwich, Maine, or during 1940

when we effected change of voting registration from Cambridge to Woolwich as of January 1, 1941, and were personally, physically in Woolwich, Maine, for that purpose." (App. 84)

In an affidavit executed August 1, 1946 by the petitioners in support of their claim for refund of District income taxes for the tax years involved in the present proceeding, petitioners stated, referring to this Court's decision in the prior case and their intentions since December 16, 1940 (App. 91):

"Nothing has occurred to change their domicile to the District of Columbia since that decision.

"As appears in the record of that case, *on December 16, 1940*, the taxpayers while in Woolwich, Maine requested the Selectmen of the Town of Woolwich again to register them as legal residents and domiciliaries of Woolwich, and they were so registered. In the record of voters in the Town of Woolwich their registration is recorded as of January 1, 1941. *Consistently since requesting such registration, the taxpayers have asserted all the rights and complied with all the requirements of domiciliaries of Woolwich, Maine.*" (Italics supplied.)

At the hearing of this case before the Board of Tax Appeals the petitioner, Henry F. Butler, stated (App. 56):

"* * * I want it to appear clearly on record that in the claim for refund for 1941 tax, the third paragraph of the supplemental statement which the respondent offered in evidence states 'prior to January 1, 1941 I was a registered voter in the Commonwealth of Massachusetts. However, I effected a change of legal residence to Woolwich, Maine, and, as appears in the official records of the Town of Woolwich, I became a registered voter there on January 1, 1941.'"³

³ See App. 69-75 for the full text of the supplemental statement referred to by Mr. Butler.

In procuring evidence for the present case Mr. Butler obtained sworn statements from the Town Clerk and the Town Tax Collector of Woolwich, Maine, to the effect that Henry F. Butler and Estelle K. Butler, the petitioners herein, have been "registered voters" and "voting residents" of the Town of Woolwich, Maine, from 1941 to 1947, *inclusive* (App. 59, 60, 61). In answer to a question on cross-examination as to whether Mr. Butler wrote any other letter since December 16, 1940 to the Selectmen of the Town of Woolwich, Maine, similar to said letter, Mr. Butler testified "I don't think so" (App. 18). In answer to a further question as to whether Mr. Butler informed the Town Clerk of Woolwich "by letter, telephone, or orally" that this Court had, on January 16, 1946, decided that petitioners were domiciled in Cambridge, Mass., on December 31, 1940, Mr. Butler testified: "As far as I know I did not write him any such thing as this or tell him recently." (App. 18, 19). And further (App. 19):

"Q. You didn't tell him about it just prior to his execution of Petitioners' Exhibit No. 3 on December 23, 1948? A. I did not."

In answer to questions on cross-examination as to whether Mr. Butler *ever* intends to discontinue his home in the District and go to Woolwich, Maine, to live there permanently, Mr. Butler testified (App. 33, 34):

"* * * The question is not susceptible to answer. I expect to spend considerably more time in Maine and less in Washington than during the war years, commencing now, or having already—well, commencing and building up. But I can not say that I ever expect to pull up stakes from any place and settle permanently in another. * * *"

There can be no question that petitioners have, for years, earnestly tried to convince District of Columbia tax

officials that they have been domiciled in Woolwich, Maine, since at least December 16, 1940. But if petitioners were domiciled in Woolwich beginning December 16, 1940, they lost such domicile by decision of this Court in the prior case. Petitioners now seek to convince this Court that the aforesaid letter of December 16, 1940, was nothing more than "an expression of future intent" and could not effect a change of domicile (Pet. Br., p. 33). As late as August 1, 1946, petitioners stated under oath in their claim for refund of the taxes here involved that consistently since making the request contained in the aforesaid December 16, 1940, letter they *have asserted all the rights and complied with all the requirements of domiciliaries of Woolwich, Maine.* (App. 91, 92, 94).

Notwithstanding the foregoing, nearly three years after this Court's decision in the prior *Butler* case, petitioners filed their petition, under oath, in this case with the Board of Tax Appeals and stated that "petitioners did not have a permanent home in the District of Columbia" on the tax dates involved, and that "petitioners have at all times from 1921 through the present time had their permanent home in Woolwich, Maine, and have been domiciled either in Woolwich, Maine or Cambridge, Massachusetts" (App. 3, 4). Petitioners made identical allegations in the petition filed with the Board in the prior case. After respondent filed a motion to dismiss this case on the ground that the petition failed to state a claim upon which relief could be granted (App. 5), Mr. Butler abandoned his alternative domicile contention and, in his opening statement before the Board, said that petitioners contend that on each of the tax dates involved "they were domiciled in Woolwich, Maine" (App. 6).

The *present* contention of petitioners appears in their brief (p. 32) as follows:

"* * * petitioners contend that they changed their domicile from Massachusetts back to Maine

on the first occasion in 1941 that they were at their home in Woolwich, Maine. At that time, as well as on all subsequent occasions when petitioners have been at their home in Woolwich, Maine, there has been the concurrence of their physical presence and their intention to make their dwelling in Woolwich their permanent home, which establishes the fact of domicile."

Then petitioners point to what occurred "in the year 1941 evidencing a change of domicile" and state (Pet. Br., p. 33):

"* * * Petitioners were in Woolwich on at least four different occasions in 1941, in May, July, August and November, aggregating about 2 months' time."

Thus the "first occasion" in 1941 that petitioners were at their home in Woolwich was May, 1941. The evidence shows that petitioners' brief visits to Woolwich, Maine, in past years have been for "business or pleasure" (App. 106, Finding 15), *always with an intention to return to their home in the District.*

Petitioners' property in Woodwich, Maine, is an old farm, on which is located a two-story farm-house about 250 years old, and out-buildings including a large barn (App. 44; 102, Finding 8). This farm at one time comprised a total of 2000 acres but, in 1939, was reduced by sale to about 700 acres. No farming operations are conducted on any part of the property (Resp. Ex. X, p. 112, 114, Findings 2 and 8),⁴ For each of the years here involved petitioners' real property in Woolwich was assessed at \$2960 for taxation (App. 103, Finding 8). Apparently, the sole purpose of petitioners' visits to Woolwich in 1941, beginning on the "first occasion" in May, was to undertake a program of renovating and renewing the Woolwich nouse,

⁴ The original exhibit is on file in this Court. It is the joint appendix in the prior case, No. 8922.

which was accomplished at a total cost of about \$2900 (App. 10; Finding 6, App. 102), except that in August, 1941 petitioners purchased for \$300 a used automobile in Boston and took it to Maine where it was registered and, at the same time, Henry F. Butler obtained a Maine operator's license (App. 9, 10, 24, 60, 102, Finding 5). It is therefore clear that the sole purpose of petitioners' visit to Woolwich in May, 1941, which is the time *now* fixed by petitioners for re-establishing domicile in Maine, was to initiate a program of reconstruction and repair of a dilapidated old frame house.

Contrasted to the foregoing, petitioners' home in the District of Columbia is a large three-story and basement brick house which had been offered to them at a price of \$80,000 but which they purchased in 1941 for \$37,500 (App. 23, 104, Finding 11). The transaction was closed in January, 1942, *and petitioners have lived there ever since* (App. 104, Finding 11). Also in 1941, Henry F. Butler bought an automobile for \$1300, which has been registered in the District during the entire period since then; and Mr. Butler has had a District operator's permit since that time (App. 104, Finding 11). Also, since 1941 and continuously throughout the years here involved, Henry F. Butler has been a resident member of the Metropolitan Club and a life member of the University Club, both of which are in the District of Columbia; he was not a member of any club in Maine during such years but is a member of the Princeton Club of New York, the National Republican Club of New York, and the Maine State Society in the District of Columbia (App. 32, 35, 104, Finding 13).

Respondent does not contend, nor can it be fairly inferred that the Board of Tax Appeals felt, that petitioners do not or did not have the legal capacity to acquire a domicile of choice other than Cambridge, Mass. It is quite clear from the Board's Findings of Fact and Opinion that after the Board disposed of petitioners' former domicile in Cam-

bridge, Mass., the Board proceeded to weigh the facts and determined that petitioners were domiciled in the District of Columbia by applying the established rules of law to such facts.

In *District of Columbia v. Murphy, supra*, the Court said (p. 455) that the search for the domicile of any person capable of acquiring a domicile of choice is but a search for his "home". As pointed out by references to and quotations from the law of domicile in petitioners' brief (Pet. Br., pp. 18, 19), a person having two homes acquires the one regarded as the *principal home* as his domicile of choice. We believe that this Court will have no difficulty in determining that petitioners' home in the District is their *principal home*, to which whenever they have been absent during the tax years involved and the year 1941 they have intended to return. It is the only logical conclusion that can be drawn from a comparison of petitioners' property holdings and activities in the District to those in Woolwich as set forth above and in Findings of Fact 4 to 9, 11 to 13, and 15 (App. 102-106).

It is well established that when one intends the facts to which the law attaches consequences, he must abide the consequences whether intended or not. *Texas v. Florida*, 306 U. S. 398, 425, 83 L. E. 817, 59 S. Ct. 563, 121 A. L. R. 1179. It is also well established that where the declarations of a person as to his intent are inconsistent with his acts, his conduct is of greater evidential value than his declarations. This, of course, is based upon the premise that "actions speak louder than words". 17 *Am. Jur., Domicil*, Sec. 92, p. 643. In the case of *Texas v. Florida, supra*, there was a situation somewhat similar to that of the petitioners here. One Green, in various deeds, papers and legal documents and statements, expressed himself as "of Terrell, Texas". He had lived at various times in Massachusetts, Texas, New York and Florida. The Court said that if declarations were alone sufficient to establish domicile, the record in that

case would leave no doubt that Green was domiciled in Texas until the time of his death. But the Court concluded that Green was domiciled in Massachusetts at the time of his death. Green never voted in Massachusetts or openly acknowledged his residence in that State as his legal residence (306 U. S. 422). In its opinion the Court stated (306 U. S. 425):

“Whatever floating intention Green may have had after 1911 to return to Texas and to make his home there, it is plain that it receded into the background after his mother’s death and had completely vanished when he began to build up his extensive estate at Round Hills in Massachusetts. When he had established himself there all the circumstances of his life indicated that his real attitude and intention with respect to his residence there were to make it *his principal home* or abiding place to the exclusion of others. * * * He spent more time there than at any other place, evidently curtailing his stays only to avoid the possible danger of being subjected to Massachusetts taxation. His conception of legal residence or domicile as a mental state whereby he could obtain certain political advantages and freedom from taxation does not weigh against this conclusion. He could not elect to make his home in one place in point of interest and attachment and for the general purposes of life, and in another, where he in fact had no residence, for the purpose of taxation. [Citing.]

“There is little to support the contention that Green ever intended to make his permanent home in New York. * * * Whatever his purpose may have been before that time, after the occupancy of the Round Hills residence *the physical facts of residence united with the major interests of his life to fix upon that as his place of domicile.* *Gilbert v. David*, 235 U. S. 561, 570. *In point of fact and purpose it became his ‘preeminent headquarters,’ which is the essence of technical domicile.* *Wil-*

liamson v. Osenton, 232 U. S. 619, 625." (Italics supplied, except as to citations.)

In the present case it is quite clear that petitioners have sought to reestablish a domicile in Maine for tax and voting purposes different from their actual residence in fact in the District where they have their principal home and pre-eminent headquarters. A change of domicile is said to arise where there is a change of abode and the absence of any present intention *not* to reside permanently or indefinitely in the new abode; stated otherwise, a change of domicile occurs if a person has actually removed to another place with an intention of remaining there permanently or indefinitely. *Gilbert v. David*, 235 U. S. 561, 569 (cited by the Supreme Court in the *Texas v. Florida* case and by this Court in petitioners' prior case).

In petitioners' prior case this Court was careful to point out that it was confined to a consideration of the facts applicable alone to 1939 and 1940 (80 U. S. App. D. C. 311, 153 F. 2d 618). The significant difference between the facts applicable to that case and those in the present case is that the facts applicable to the years since 1940, as shown by petitioners' acts and conduct, evidence a fixed and definite intent to remain in the District, where Henry F. Butler conducts his law office and where petitioners have their principal home, for an unlimited or indefinite time, without any definite intention of ultimate removal. The evidence shows quite clearly that petitioners have not, since December 31, 1940, actually removed to Woolwich, Maine, with an intention of remaining there permanently or indefinitely. It was to the District of Columbia that petitioners always returned, since December 31, 1940, whenever they were absent. By testifying that he desires to remain and practice law in the District (App. 34), Henry F. Butler negatived a definite intent to return to Maine and asserted an intent to live in the District permanently or indefinitely. *Rogers v. Rogers*, 76 U. S. App. D. C. 297, 130 F. 2d 905.

Petitioners attach much weight (Pet. Br., pp. 35, 36) to the fact that the Administrator, Income Tax Division of the District Assessor's office, advised Henry F. Butler by letter dated April 16, 1942, as follows (App. 61):

"We acknowledge receipt of your letter of April 15, 1942, and inasmuch as we believe that the papers submitted establish your claim of domicile outside the District of Columbia on the last day of the taxable year 1941, your check of \$654.23 and Mrs. Estelle K. Butler's check of \$14.11 are returned to you herewith."

Petitioners state (Pet. Br., pp. 10, 36) that the aforesaid determination was never cancelled or revoked. Such determination *was*, indeed, revoked. On cross-examination with respect to the aforesaid determination, Mr. Butler testified as follows (App. 26):

"Q. Now, did there come a time, Mr. Butler, when the District officials in the Income Tax Division told you either orally or in writing that they did not consider you to be exempt from District income taxes beginning in 1939? A. I believe so.

"Q. Now, I have called upon you to produce, Mr. Butler, a letter from Mr. Brooke dated August 11, 1944. Do you have that letter? A. Yes, I have."

The decision of the Board of Tax Appeals in petitioners' prior case was entered August 3, 1944 (Resp. Ex. X, p. 121).⁵ The letter from Mr. Brooke, Assistant Administrator of the Income Tax Division, dated August 11, 1944, and referred to above reads in material part as follows (App. 75):

"If you do not file an appeal from the decision of the Board of Tax Appeals for the District of

⁵ See footnote 4.

Columbia within 30 days after August 3, 1944, it is the intention of this office to demand payment of income taxes for the years 1941, 1942 and 1943.
 * * *

The conclusion on April 16, 1942, by the Administrator that Mr. Butler had established domicile outside the District on the last day of the taxable year 1941 "was reached on the basis of information that had been submitted with his 1941 return alone". At that time District tax officials did not have available the returns and information attached to petitioners' 1939 and 1940 returns. (App. 98, 54, 55). The "papers submitted" to the Administrator as to 1941 were claims for refunds with attached papers, made under oath on April 15, 1942 (App. 65-75). Nowhere in those sworn statements did petitioners disclose that they had purchased a large three-story and basement brick home in the District for the sum of \$37,500 in 1941 (the tax year involved), into which they had moved in January, 1942, and where they were residing in April, 1942, when the affidavits were made, notwithstanding that the information requested by the Administrator required statements of values as to investments and property within as well as without the District (App. 68, item 14). It is, of course, obvious that the reason why petitioners were not assessed for 1941 taxes is because the statutory period for such assessment had expired when the Board's decision in the prior case was entered and when Mr. Brooke wrote the aforesaid letter. The 1941 returns were filed on or about April 15, 1942 (App. 68, 69). The time within which the assessment for that year could have been made was two years after the filing of such returns (D. C. Code, 1940, Sec. 47-1533).

CONCLUSION

It is respectfully submitted that the findings of fact, conclusions of law, and decision of the Board of Tax Appeals

were correct, and that the Board's decision should be affirmed.

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT
United States Court of Appeals
For the
District of Columbia Circuit

No. 10,243

FILED MAR 29 1950

Joseph W. Stewart
HENRY F. BUTLER and ESTELLE K. BUTLER, CLERK
Petitioners,

v.

DISTRICT OF COLUMBIA, *Respondent*

PETITION FOR REHEARING

The petitioners herein respectfully petition this Honorable Court to grant a rehearing and to reconsider the decision in this case handed down February 20, 1950 for the following reasons:

This Court in its opinion rests its decision upon the authority of *Arbaugh v. District of Columbia*, 85 U. S. App. D. C., 176, F. 2d 28 (1949) in which this Court held "that persons are domiciled here who live here and have no fixed and definite intent to *make their homes* where they were formerly domiciled . . . to retain his former domicile, one . . . must always have a fixed and definite intent to return and *take up his home* . . . A person without an intent one way or the other is domiciled here if he lives here," and on *District of Columbia*

v. *Murphy*, 314 U. S. 441, 86 L. Ed. 329, 62 S. Ct. 303 (1949) which stated at p. 454 "we hold that a man does not acquire a domicile in the District simply by coming here to live for an indefinite period of time while in the government service. A contrary decision would disregard the statements made on the floor of Congress as to the meaning of the statute. . . . On the other hand, we hold that persons are domiciled here who live here and have no fixed and definite intent to return and *make their homes* where they were formerly domiciled. . . . In order to retain his former domicile, one who comes to the District . . . must always have a fixed and definite intent to return and *take up his home there* . . ." (Emphasis added)

In support of a finding that petitioner husband "finds it 'impossible to say' whether or when he will permanently return to live in Maine, thus revealing a lack of the fixed and definite intent of which we spoke in the *Arbaugh* case" the Court quotes *a portion only of the testimony* given by the petitioner husband appearing in the Joint Appendix at p. 34A.

It is respectfully submitted that the portion of the testimony quoted standing by itself does not reflect the intent of these petitioners, but when considered in conjunction with the other testimony given in response to specific questions clearly discloses the intent to retain, maintain and return to their permanent home in Maine to the full extent required in all previously decided cases for the maintenance of a domicile outside of the District of Columbia.

The attention of this Court is respectfully directed to the preceding portion of the testimony as it appears in the Joint Appendix at pages 16A, 17A, 22A and 33A.

Petitioner husband had testified (16A, 17A) "I hesitate to say that I expect to *return to Maine permanently at a fixed time* because I think that is irrelevant. *I periodi-*

cally returned to Maine. I would never want to live any place 12 months a year. I expect to make my residence in Washington less and less as the years go on, and I hope I will never be unable to come to Washington occasionally.” (Emphasis added)

On cross examination by Counsel for Respondent, the following appears at 22A: “Q. Do you have a home in any other place besides the District of Columbia? A. I have a home in Woolwich, Maine. Q. You don’t have a home, what you call a home, in the District of Columbia? Is that what you are trying to convey? A. That is what I am trying to convey if you construe ‘home’ as domicile. If you construe home as where a man says ‘home is where I am’ I have many homes.”

Then, commencing on 33A, immediately preceding the portion quoted in the decision and which must be read in conjunction with that quotation, the following appears: “Q. Where do you contend you were domiciled during the years 1941 to the present time? A. Woolwich, Maine. Q. And when do you intend to go back to Woolwich, Maine? A. Probably March of this year. Q. To remain there, make your home I mean. A. *My home is there.* I don’t expect to stay and not leave Woolwich, Maine, again.

“Q. What I am trying to get at, Mr. Butler, is *when do you expect to pull up stakes in the District of Columbia, get rid of your law practice, and your home here, and go back to Woolwich and live, physically reside there permanently?*

“A. I think that is an impossible question to answer. I object. I can answer that question with qualifications but not in the form stated. It is pregnant with implications.”

“The Board: I think you can answer and make such explanation as you choose.

"The Witness: My answer is that *I don't think it is a question of going back to Maine. I maintain a home in Maine. ~~I go there~~ I go there the same as anybody goes to any home of his own.*

"The Board: Wait a minute, that is not the question. The question was, *when do you intend to give up your practice in the District, discontinue your home here, and go to Maine to remain there permanently as distinguished from maintaining a place of abode in the District.*" (Emphasis added)

It was to these questions which were no more susceptible to simple answer than the classical example of "when do you intend to stop beating your wife" that petitioner husband made the response quoted in the decision.

There is nothing in the law of domicile that requires one to give up his law practice anywhere in order to maintain a domicile elsewhere.

It is clear from all the testimony that these petitioners consider their "stakes" to be driven deep in the soil of the State of Maine and therefore it was, indeed, *impossible* for petitioner husband to say that, or when he intended to "pull up stakes" from Washington—because in his opinion he had no stakes down in the District.

In response to the question "when do you expect to . . . get rid of . . . your home here," petitioner husband replied that he maintained his *home* in Maine and not in the District. The word "home" as used in connection with domicile, and in this case, is a word of art, and connotes ~~far~~ more than a mere place of residence or abode. Petitioner was answering that question in the sense in which it was asked. There is nothing in the law of domicile that precludes a person from having two or more places of abode, while maintaining one of them as his *home* and domicile.

Counsel for Respondent asked when petitioner husband intended to "go back to Woolwich, *physically reside there permanently*" and the Board emphasized the precise question by restating it "go to Maine to *remain there permanently* as distinguished from maintaining a place of abode in the District."

Emphasis was on *physically residing permanently in Maine*, and not on maintaining or returning to a home in Maine. Petitioner previously had stated he would never want to live any place for 12 months a year. As appears from the evidence, petitioner already was residing a substantial part of each year at his home in Maine. Therefore the only possible answer was that he expected to spend more time in Maine and less in Washington than during the war years, *commencing now*. That showed a present intent.

In further answer to these questions petitioners said (35A) "I ~~am~~ maintaining a home there [Woolwich, Maine] now."

Counsel for Respondent endeavored to discredit petitioners' home in Woolwich by referring to it as "a dilapidated old frame house." (Resp's Brief p. 11) By unrefuted testimony it appears that their home in Woolwich was during all the years here involved comparable to their home in Washington, and that each place is thoroughly and comfortably furnished. It is unnecessary to call the attention of this Court to the fact that the coastal portion of the State of Maine was among the earliest settled parts of the United States and that the territory now known as Woolwich (formerly variously called Sagadahoc, Arrowsic, Georgetown and Monseag) boasted a thriving community by the middle of the 17th century and was the birthplace of the first governor of Massachusetts, Sir William Phipps. (See any history of New England, or the encyclopedia Brittanica, or History of Bath, Maine by Henry Wilson Owen). In the circumstances, antiquity of a dwelling

house in that community lends historic interest and enchantment and does not connote dilapidation.

It is respectfully submitted these petitioners have shown a present intent to maintain their home in Woolwich, Maine and always to return to their home there to the full extent required to maintain their domicile there. None of the decided cases rest domicile on physically residing permanently in one place. These petitioners have shown a far more permanent home, with far more time physically spent in that home, in Woolwich, Maine than any of the other litigants whose places of domicile heretofore have been before this or the Supreme Court in connection with District of Columbia matters.

Specifically, it is respectfully submitted that the conclusion of this Court that petitioner's husband "finds it 'impossible to say' whether or when he will permanently return to live in Maine, thus revealing a lack of the fixed and definite intent of which we spoke in the *Arbaugh* case" is contrary to the whole testimony in the record.

On the contrary, it is submitted that petitioners have maintained the burden of proof that they have at all times during the years here involved maintained their permanent home and domicile in Woolwich, Maine, to which at all times here involved they have had the present definite intent to return, and to reside to the same extent as anyone else resides in his own home and domicile.

Wherefore, petitioners request that they be granted a rehearing, that the Court revise its findings, amend its present judgment, and reverse the finding and judgment of the Board of Tax Appeals for the District of Columbia.

Respectfully submitted,

HENRY F. BUTLER,
Counsel for Petitioners

I certify that the foregoing petition is made in good faith and not for the purpose of delay.

HENRY F. BUTLER

CERTIFICATE OF SERVICE

I certify that I have made service of the foregoing petition by delivering a copy to Counsel for Respondent.

MAR 15 1950

HENRY F. BUTLER
